

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 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.

PARTY FILING THIS DOCUMENT ARCTIC CANADIAN DIAMOND COMPANY LTD.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Torys LLP
79 Wellington St W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Scott Bomhof
Telephone: + 1 416.865.7370
Email: sbomhof@torys.com
File No. 41909-0001

AFFIDAVIT OF ERIC HOFF
Sworn on November 4, 2021

I, Eric Hoff, of the City of Waltham, in the State of Massachusetts, **MAKE OATH AND SAY THAT:**

1. I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief, and where so stated I believe the same to be true.
2. I am a Senior Analyst with DDJ Capital Management, LLC (“**DDJ**”). I was involved in the negotiation of the ACDC APA (as defined below) on behalf of the Bidders (as defined below).
3. Dominion Diamond Holdings, LLC, Dominion, Dominion Diamond Canada ULC, Dominion Diamond Marketing Corporation, Dominion Diamond Delaware Company LLC and Dominion Finco Inc. (collectively, the “**Sellers**”) reached an agreement with DDJ and Brigade Capital Management, LP (“**Brigade**”, and together with DDJ, the “**Bidders**”) for the purchase and sale of substantially all of the Sellers’ assets other than the Diavik Joint Venture Interests pursuant to an asset purchase agreement dated December 6, 2020 (the “**ACDC APA**”).
4. I have reviewed the Application Materials filed by FTI Consulting Canada, Inc., the Court-appointed monitor of the Applicants (the “**Monitor**”), returnable on November 9th, 2021, including the Second Supplement to the Sixteenth Report of the Monitor dated November 1, 2021 (the “**Second Supplemental Report**”). I have also reviewed the Bench Brief filed of Credit Suisse AG (the “**Agent**”) dated November 1, 2021 (the “**Agent’s Reply Brief**”). Any capitalized term used in this Affidavit that are not otherwise defined shall have the meaning attributed thereto in the Second Supplemental Report. All monetary amounts contained in this Affidavit are expressed in Canadian dollars unless otherwise indicated.
5. At paragraph 25 of the Second Supplemental Report, the Monitor states that it advised me of “the fact that Monitor was aware that representatives of DDMI and the Agent were engaged in confidential discussions” during a videoconference held on August 31, 2021

(the “**August 31st Videoconference**”). At paragraph 26 of the Second Supplemental Report, the Monitor states that I “took no issue with the approach being taken by the Monitor and accepted our suggestion of a recurring monthly update call”. This does not give the full context of this videoconference.

6. The genesis of the August 31st Videoconference was that I contacted the Monitor to get an update on the Monitor’s efforts to maximize recovery of the Diavik Realization Assets and the status of the CCAA proceeding. The August 31st Videoconference lasted approximately 20 minutes and the primary issue discussed was the status of the Cover Payments and the diamond inventory held by DDMI. At the end of the August 31st Videoconference, I asked the Monitor whether there were any settlement discussions ongoing with respect to the Cover Payments and diamond inventory. In a brief exchange lasting approximately 30 seconds, the Monitor responded to my question by advising me that they had heard that there may be settlement discussions ongoing between the Agent and DDMI, but that the Monitor was not part of the subject discussions and the discussions were confidential. My understanding of the matter, based on that very brief exchange, was that the Monitor had an inkling that discussions were taking place related to the sale transaction but it had no substantive information regarding such matters. At no time did the Monitor advise me that those discussions involved a potential sale transaction or any activity involving a transfer of the ownership of the Diavik Realization Assets or a discontinuance of the BC Civil Action. The Monitor made no mention of the draft support agreement which it appears to have received on or about August 19, 2021 according to the Second Supplemental Report.
7. Following the August 31st Videoconference, the Monitor did suggest a monthly follow-up videoconference, which I agreed would be a good idea. The Monitor did not follow-up to notify me of the AVO Transaction until September 28, 2021. Had I been aware as of our August 31 Videoconference that there was a proposal that the two sides were actively negotiating and the Monitor was privy to same, we would have been actively engaged in diligencing such proposal. The lack of candid disclosure is disconcerting at best.
8. In paragraph 6 of the Agent’s Reply Brief, the Agent asserts that:

“It is disingenuous for ACDC to claim, now that it does not like the AVO Transaction, that there was any contemplation, let alone a commitment, that a second marketing process would be undertaken in respect of the Diavik Interest. In fact, the Diavik Realization Account was established for an entirely different purpose, to the knowledge of all parties – the administration of the Diavik Realization Assets.”

The Agent’s assertion is not true. The Diavik Realization Account, to the knowledge of all parties, was funded to support the Monitor’s efforts to take all reasonable steps that are necessary or desirable for the full realization and recovery of the Diavik Realization Assets, as stated in the TSA. These steps were anticipated to include, among other things: (i) efforts to monetize the Diavik Realization Assets; (ii) efforts to resolve issues related to DDMI’s claims and the Cover Payments; (iii) initial market testing to assess the value of the Diavik Realization Assets; and (iv) in the event that a sale was contemplated, to take typical steps to canvas the market and determine a fair value of the Diavik Realization Assets. It was always contemplated that further funding may be needed to complete these steps, and such funding is contemplated by section 2.01(a) of the TSA. DDJ, along with Brigade, have offered to provide such funding and are still prepared to do so pursuant to the Interim Financing Term Sheet attached as Schedule “A” to the Affidavit of Kristal Kaye dated October 13, 2021. The Monitor has never contacted either of the Bidders to discuss the offer of financing or the amount of funding that the Monitor believes will be required to take further steps for the full realization and recovery of the Diavik Realization Assets.

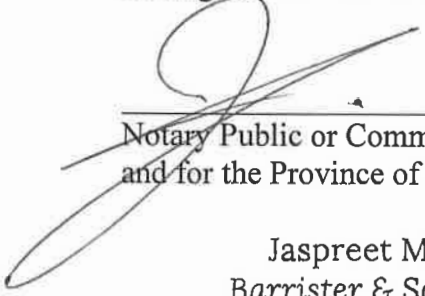
9. I also do not agree with the statement made in paragraphs 30 and 32 of the Agent’s Reply Brief that the commercial negotiations related to the second and third lien claims against Artic Canadian Diamond Company (“ACDC”) in the aggregate amount of US\$18.5 million were to compensate the First Lien Lenders for any credit risk associated with the assumption of a portion of their outstanding funded debt by ACDC. This issue was not raised at the time.
10. The Agent’s Reply Brief also states that the full amount of DDM’s US\$70 million funded debt was assumed by ACDC and the First Lien Lenders received no payment at the time. On closing of the ACDC Transaction, the First Lien Lenders received US\$15 million in cash (by way of a purchase of US\$15 million of the First Lien Debt by the Bidders) and

ACDC granted new first lien debt to the First Lien Lenders in the amount of US\$55 million. In addition, some modest amortization payments have been made to the First Lien Lenders on their claims against ACDC in 2021.

11. I make this Affidavit for no improper purpose.
12. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this affidavit. I, however, was linked by way of video technology to the Commissioner for Oaths (“**Commissioner**”) notarizing this document. The following steps have been or will be taken by the Commissioner or me:
 - (a) I have shown the Commissioner the front and back of my current government-issued photo identification (“**ID**”) and the Commissioner has compared my video image to the information on the ID.
 - (b) The Commissioner has taken a screenshot of the front and back of my ID and will retain it.
 - (c) The Commissioner and I have a paper copy of the Affidavit before us.
 - (d) The Commissioner and I have reviewed each page of this Affidavit to verify the pages are identical and have initialed each page in the lower right corner.
 - (e) At the conclusion of our review of the Affidavit and exhibits (if any), the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit.
 - (f) I will send the signed Affidavit electronically to the Commissioner.



SWORN BEFORE ME at Calgary, Alberta,)
 this 4th day of November, 2021, utilizing)
 video technology in accordance with the)
 process for remote commissioning of)
 affidavits described in the March 25, 2020)
 Alberta Court of Queen’s Bench Notice to)
 the Profession and Public NPP#2020-02)
 titled “Remote Commissioning of Affidavits)
 for use in the Civil and Family Proceedings)
 During the COVID-19 Pandemic”.)
)



Notary Public or Commissioner for Oaths in
 and for the Province of Alberta

Jaspreet Mann
 Barrister & Solicitor
 A Commissioner for Oaths
 in and for Alberta

ERIC HOFF

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During the COVID-19 Pandemic".)
)



ERIC HOFF

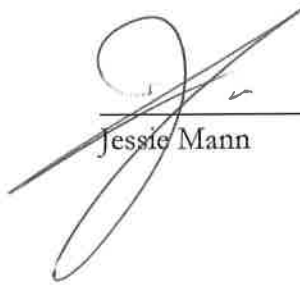
Notary Public or Commissioner for Oaths in
and for the Province of Alberta

**Certificate of Commissioning by Video Technology
to the Affidavit of Eric Hoff
sworn on November 4, 2021**

I, Jessie Mann, Notary Public/Commissioner for Oaths in and for the Province of Alberta, took the Affidavit of Eric Hoff via video technology on November 4, 2021 (the "Affidavit").

The deponent and I followed the process outlined by the Alberta Court of Queen's Bench Notice to the Profession & Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the deponent with the initialed copy that was before me while I was linked by video technology with the deponent. Upon being satisfied that the two copies were identical, I affixed by name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.



Jessie Mann