



COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

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 DOMINION FINCO INC. AND DOMINION  
DIAMOND MARKETING CORPORATION**

DOCUMENT

**ASSIGNMENT ORDER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**DATE ON WHICH ORDER WAS PRONOUNCED:** January 27, 2021

**LOCATION OF HEARING:** Calgary

**NAME OF JUDGE WHO MADE THIS ORDER:** The Hon. Madam Justice K.M.  
Eidsvik

**UPON THE APPLICATION** of Dominion Diamond Mines ULC, Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., Dominion Diamond Marketing Corporation (collectively, the "**Dominion Vendors**") and Washington Diamond Investments, LLC (together with the Dominion Vendors, the "**Applicants**") under section 11.3 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") for an order (the "**Order**"), among other things, assigning the rights and obligations of the Dominion Vendors under and to the Assigned Contracts (as defined below) and any Additional Assigned Contracts (as defined below) to Arctic Canadian Diamond Company Ltd. (the "**Purchaser**"); **AND UPON** having read the Application, the Affidavit of Kristal Kaye, sworn January 20, 2021, and the Thirteenth Report of the Monitor dated January 25, 2021; **AND UPON** hearing counsel for the Applicants, counsel for the Purchaser, and those other counsel present:

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.

**DEFINED TERMS**

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Approval and Vesting Order granted by this Court in these proceedings on December 11, 2020 (the "**Approval and Vesting Order**").

**ASSIGNMENT OF THE ASSIGNED CONTRACTS**

3. Upon the delivery by the Monitor of the Monitor's Certificate (the "**Effective Date**") and notwithstanding any assignment, conveyance, transfer, change of control or similar provision restricting the assignment or requiring the consent of any person to an assignment, conveyance, transfer or a change of control contained therein (each, an "**Anti-Assignment Provision**"), all of the rights and obligations of the Dominion Vendors under and to the agreements listed in **Schedule "A"** to this Order (collectively, the

"**Assigned Contracts**") shall be assigned, conveyed and transferred to, and assumed by, the Purchaser pursuant to section 11.3 of the CCAA.

4. The assignment of the Assigned Contracts is hereby declared valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment of the Assigned Contracts shall be subject to the provisions of the Approval and Vesting Order directing that the Dominion Vendors' rights, title and interests in the Assigned Contracts shall vest absolutely in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances in accordance with the provisions of the Approval and Vesting Order.
6. Following the assignment of any of the Assigned Contracts to the Purchaser, all such Assigned Contracts shall remain in full force and effect, and the Purchaser shall be entitled to all of the rights, benefits and entitlements of the Dominion Vendors under such Assigned Contracts. Following the Effective Date, no counterparty under any of the Assigned Contracts, nor any other person, upon the assignment, conveyance and transfer to, and assumption by, the Purchaser of any of the Assigned Contracts hereunder shall accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right, entitlement or remedy (including any right of set-off), make or pursue any demand, claim, action or suit or exercise any right or remedy under such Assigned Contracts against the Purchaser, by reason of:
  - (a) any circumstance that existed or event that occurred on or prior to the Effective Date that would have entitled such counterparty to the Assigned Contract to enforce those rights or remedies or caused an automatic termination to occur, including any monetary defaults or defaults or events of default arising as a result of the insolvency of any Dominion Vendor or the cessation of the Dominion Vendors' or their affiliates' normal course business operations;
  - (b) the Dominion Vendors having sought or obtained relief under the CCAA;
  - (c) releases, discharges, cancellations, transactions, or other steps taken or effected pursuant to the Purchase Agreement and/or the Transaction that are the subject

of the Approval and Vesting Order, the provisions of this Order or any other Order of the Court in these proceedings;

- (d) any change of control of the Dominion Vendors or their affiliates arising from the implementation of the Transaction, or any Anti-Assignment Provision in an Assigned Contract and, for greater certainty, the Transaction and its implementation shall be deemed not to constitute a change in ownership or change in control under any Assigned Contract; or
- (e) any failure by the Dominion Vendors to perform a non-monetary obligation under any of the Assigned Contracts;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty:

- (a) nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the Closing of the Transaction under the Assigned Contracts other than in respects of items (a) to (e) above; and
- (b) any Permitted Encumbrances shall continue to have the priority and entitlement attaching thereto notwithstanding this Order.

7. All monetary defaults in relation to the Assigned Contracts existing prior to the Closing of the Transaction, if any, other than those arising by reason only of the insolvency of the Dominion Vendors, the commencement of these CCAA proceedings, or the failure to perform a non-monetary obligation under any of the Assigned Contracts, shall be paid by the Dominion Vendors to the applicable counterparty in such amount as is set forth in Schedule A to this Order under the heading "*Cure Amount*" and any such Cure Amount shall be paid within 30 days from the delivery by the Monitor of the Monitor's Certificate and for certainty the payment of the Cure Amount shall not be the responsibility of the Purchaser.
8. On the Effective Date of the assignment, all counterparties to the Assigned Contracts shall be deemed to have waived any and all defaults then existing or previously committed by the Dominion Vendors or caused by the Dominion Vendors, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term,

provision, condition or obligation, express or implied, in any Assigned Contract arising from the commencement or existence of these CCAA proceedings (including any deferral or interruption of payments and any incurrence of or creation of charges arising from or relating to any such proceeding), the insolvency of the Dominion Vendors or the entering into the Purchase Agreement or any other agreement or document in connection with the Transaction, and the completion of the Transaction, and any and all notices of default or termination and demands for payment under or in connection with any of the Assigned Contracts shall be deemed to have been rescinded and of no further force nor effect.

9. Immediately following the assignment and transfer of the Assigned Contracts, no counterparty under any of the Assigned Contracts shall have any claim whatsoever against the Dominion Vendors or the Monitor other than with respect to the Cure Amount.
10. Notwithstanding any other provision of this Order, if the Cure Amount payable with respect to a Restricted Assigned Contract is not paid as required by this Order then such Assigned Contract shall not be assigned, conveyed, or transferred to the Purchaser pursuant to this Order.
11. The Dominion Vendors shall serve a copy of this Order on the counterparties to the Assigned Contracts.

#### **ADDITIONAL ASSIGNED CONTRACTS**

12. Following the date of this Order, including, for greater certainty, following the Closing of the Transaction, the Dominion Vendors are authorized to provide to the counterparties to any additional Assigned Contracts not listed on Schedule "A" to this Order that are to be assigned to the Purchaser pursuant to the Purchase Agreement and in respect of which the counterparty's consent is required thereunder but not obtained (each an "**Additional Assigned Contract**") a notice of the assignment to and assumption by the Purchaser of such Additional Assigned Contract and the applicable Cure Amount with respect to such Additional Assigned Contract (each an "**Assignment Notice**").
13. Any counterparty to an Additional Assigned Contract who receives an Assignment Notice shall have seven (7) days from the date of such Assignment Notice (the "**Objection Deadline**") to provide notice in writing to the Monitor, the Dominion Vendors, and the

Purchaser of any objection it has to such assignment to and assumption by the Purchaser of the applicable Additional Assigned Contract.

14. If the Monitor, the Dominion Vendors, and the Purchaser do not receive any notice of objection to the assignment to and assumption by the Purchaser of an Additional Assigned Contract by the Objection Deadline, the Dominion Vendors shall be authorized to assign, convey and transfer such Additional Assigned Contract to the Purchaser subject to paragraphs 3 to 11, inclusive, of this Order, which shall apply *mutatis mutandis* to the assignment and assumption of any Additional Assigned Contracts without any further Court order; provided that the “*Cure Amount*” applicable to such Additional Assigned Contracts shall be the amount, if any, required to be paid to remedy all of the Dominion Vendors’ monetary defaults under such Additional Assigned Contracts existing prior to the Closing of the Transaction, if any, other than those defaults arising by reason only of the insolvency of the Dominion Vendors, the commencement of these CCAA proceedings, or the failure to perform a non-monetary obligation under any of the Additional Assigned Contracts (or such other amounts as may be agreed by the Purchaser and the counterparty to such Additional Assigned Contracts).
15. The applicable date of assignment and assumption of any Additional Assigned Contracts shall be the later of the Objection Deadline or delivery of the Monitor's Certificate.
16. If notice of an objection to the assignment to and assumption by the Purchaser of an Additional Assigned Contract is received by the Monitor, the Dominion Vendors, and the Purchaser from the counterparty to such Additional Assigned Contracts by the Objection Deadline, the Dominion Vendors are authorized to bring an application before this Court for the resolution of such objection.

#### **MISCELLANEOUS MATTERS**

17. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended

(the "**BIA**"), in respect of the Applicants, and any bankruptcy order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provision of any federal or provincial statute;

the assignment of the Assigned Contracts and any Additional Assigned Contracts to the Purchaser in accordance with this Order and the Purchase Agreement shall be binding on any trustees in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. Notwithstanding any other provision of this Order, the Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual, equitable, or statutory rights) and apply any and all post-filing amounts which the Applicant owes or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the Applicant.
19. The Applicants, the Monitor and the Purchaser shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary, to effect the assignment and transfer of the Assigned Contracts and any Additional Assigned Contracts (including any transfer of title registrations in respect of such Assigned Contracts and any Additional Assigned Contracts), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.
20. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts,

tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

21. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.



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Justice of the Court of Queen's Bench of Alberta



**SCHEDULE "A"**  
**(ASSIGNED CONTRACTS)**

<b>#</b>	<b>Agreement Counterparty</b>	<b>Agreement Description</b>	<b>Agreement Date</b>	<b>Cure Amount</b>
<b>1.</b>	Northwestel	Tariffed Services Agreement – Enterprise Performance	31 May 2017	\$0
<b>2.</b>	Bradley Air Services Limited (D/B/A/ First Air)	Agreement for the Supply of Aircraft Services	13 July 2015	\$0
<b>3.</b>	Caterpillar Financial Services	Financing Lease Agreement	19 January 2018	\$0