

COURT FILE NUMBERS 25-2979738 / B201 979738
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF GRIFFON PARTNERS OPERATION CORP., GRIFFON PARTNERS HOLDING CORP., GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., SPICELO LIMITED, STELLION LIMITED, 2437799 ALBERTA LTD., 2437801 ALBERTA LTD. and 2437815 ALBERTA LTD.



C91545

APPLICANTS TRAFIGURA CANADA LIMITED and SIGNAL ALPHA C4 LIMITED

RESPONDENTS SPICELO LIMITED

DOCUMENT **AMENDED APPLICATION TO APPOINT A RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
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Trafigura Canada Limited and Signal Alpha C4 Limited

File No.: 137093.1011

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: September 22, 2023

Time: 10:00 am

Where: Calgary, Alberta

Before Whom: The Honourable Justice Johnston presiding on the Commercial Duty List

Go to the end of this document to see what you can do and when you must do it.

Purpose of Application:

1. The Applicants, Trafigura Canada Limited (“**Trafigura**”) and Signal Alpha C4 Limited (“**Signal**” and with Trafigura, the “**Lenders**”), are secured creditors of Spicelo Limited (“**Spicelo**”). Spicelo is indebted to the Lenders pursuant to the terms of the Spicelo Guarantee (as defined below) in the amount of at least USD\$38M. On August 16, 2023, the Lenders formally demanded repayment of the indebtedness from Spicelo, but Spicelo has failed, neglected, or refused to pay the same.
2. Thereafter, despite having assets valued in excess of CAD\$60M, Spicelo filed a Notice of Intention to Make a Proposal (“**NOI**”) under *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”), on August 25, 2023, along with Griffon Partners Operations Corp. (“**GPOC**”) and 6 other guarantors (collectively, the “**Other NOI Parties**”). The Lenders are the primary secured creditors in the NOI proceedings.
3. Spicelo and the Other NOI Parties have filed an application to, *inter alia*, extend the initial stay of proceedings to November 8, 2023. The Lenders wish to immediately enforce their security against Spicelo as a solvent guarantor, and oppose Spicelo’s request for an extension of the stay in these NOI proceedings.
4. In the event the request for a stay extension is denied, Spicelo will be deemed bankrupt. In such circumstances, the Lenders seek to enforce their contractual right to appoint a receiver over all of Spicelo’s present and after-acquired properties, assets, and undertakings (the “**Property**”). In all of the relevant circumstances, a receiver is best suited to liquidate the Property, which has sufficient value to see that the Lenders paid out in full. Such a result would be beneficial to all other creditors and dramatically simplify these proceedings.

Remedy claimed or sought:

5. The Lenders seek an Order, substantially in the form attached as **Schedule “A”**, for the following relief:
 - (a) declaring that the time for service of this application (the “**Application**”) and supporting materials be abridged, that the Application is properly returnable on September 22, 2023 and that service of the Application and supporting materials, as described in the corresponding affidavit of service, is good and sufficient, and that no other persons are entitled to service of the Application or any orders arising therefrom;

- (b) if necessary, terminating the NOI Proceedings against Spicelo pursuant to section 50.4(11) of the BIA;
- (c) appointing KPMG LLP (“**KPMG**”) as the receiver and manager (the “**Receiver**”) of all of Spicelo’s Property pursuant to section 243(1) of the BIA and sections 13(2) of the *Judicature Act*, RSA 2000, c J-2 (the “**Judicature Act**”), 99(a) of the *Business Corporations Act*, RSA 2000, c B-9 (the “**BCA**”), and 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the “**PPSA**”);
- (d) awarding costs of this Application to the Lenders, on a solicitor client full indemnity basis; and
- (e) such further and other relief as counsel for the Lenders may advise.

Grounds for making this application:

The Parties

- 6. Trafigura is a corporation incorporated pursuant to the federal laws of Canada and extra-provincially registered in the Province of Alberta.
- 7. Signal is a corporation incorporated pursuant to the laws of Jersey. The Lenders provide capital to Canadian businesses, including lending within the oil and gas industry in Western Canada.
- 8. The Respondent, Spicelo, is an investment corporation incorporated pursuant to the laws of the Republic of Cyprus. Spicelo’s only asset is the Greenfire Securities (as defined below), does not have employees or carry on active business, and is a holding company.

The Credit Agreement and Guarantees

- 9. On July 21, 2022, GLAS USA LLC and GLAS Americas LLC (collectively, the “**Collateral Agent**”), as agent for the Lenders, executed a credit agreement (the “**Credit Agreement**”) with Griffon Partners Operation Corp. (“**GPOC**”) whereby the Lenders agreed to advance a total of USD\$35,869,565.21 to GPOC (the “**Commitment**”) to serve as financing towards an asset purchase and sale transaction between Tamarack Valley Energy Ltd. (“**Tamarack**”) and GPOC (the “**Tamarack Acquisition**”).
- 10. Pursuant to the Credit Agreement, GPOC agreed to monthly amortization payments of USD\$1,328,502.415 starting on October 1, 2022 and ending on January 31, 2025, at which point the Commitment was to be repaid in full, along with all accrued unpaid interest, fees, and

all other obligations in connection with the Credit Agreement (including, *inter alia*, any applicable MOIC Amount owing to the Lenders). The MOIC Amount is defined in the Credit Agreement as an amount sufficient to achieve a 1.4 multiple on each Lender's ratable portion of the outstanding principal less the original issue discount of USD\$2,869,565.21 (the "**OID**").

11. The Commitment advanced under the Credit Agreement (after netting the OID) was made on July 21, 2022. The Commitment was allocated as to Trafigura in the amount of USD\$10,869,565.21 and as to Signal in the amount of USD\$25,000,000.
12. As security for the payment of the Commitment, GPOC executed a fixed and floating term debenture over all of GPOC's present and future real and personal property (the "**GPOC Debenture**").
13. Pursuant to the GPOC Debenture, in the event of a default under the Credit Agreement, GPOC is required to repay the Commitment on demand, plus interest thereon. Additionally, in the event of default in the payment of any principal or interest, GPOC is required to pay interest on the amount in default both before and after demand, default, and judgment, with interest on overdue interest at the same rate. The GPOC Debenture further grants the Collateral Agent certain rights and remedies upon default by GPOC, including, *inter alia*, the right to appoint a receiver or receiver and manager.
14. Concurrent with the execution of the Credit Agreement and the GPOC Debenture, a total of seven secured guarantees were provided to the Lenders. Spicelo, Griffon Partners Capital Management Ltd. ("**GPCM**"), Griffon Partners Holding Corp. ("**GPHC**"), Stellion Limited ("**Stellion**"), 2437801 Alberta Ltd. ("**2437801**"), 2437799 Alberta Ltd. ("**2437799**"), and 2437815 Alberta Ltd. ("**2437815**") (collectively, the "**Guarantors**") each executed guarantees along with supporting security in favour of the Collateral Agent, whereby they guaranteed the obligations of GPOC under the Credit Agreement.
15. In the case of Spicelo, a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022, was executed between Spicelo and the Collateral Agent, as amended by a first amending agreement dated August 31, 2022 (the "**Spicelo Guarantee**") the collateral of which was, *inter alia*, all of the common shares in the capital of Greenfire Resources Inc. ("**Greenfire**") owned by Spicelo (the "**Greenfire Securities**") and the Special Dividend (as defined below).

Defaults and Demands for Payment

16. Pursuant to the Credit Agreement, GPOC was required to adhere to certain terms concerning repayment of the Commitment and other financial matters. On November 1, 2023, GPOC

defaulted on the Credit Agreement by failing to meet mandatory principal amortization payments as required under section 2.5(2) of the Credit Agreement. On November 15, 2022, GPOC made a principal amortization payment of USD\$1,281,056 but continued to default on the Credit Agreement when, on December 1, 2022, it again failed to meet mandatory principal amortization payments. Furthermore, GPOC has breached the Sections 6.1(c), 6.1(p) 6.1(y), and 6.3 (collectively, the “**Defaults**”), details of which are as follows:

- (a) as of December 31, 2022, GPOC has failed to maintain a PDP Coverage Ratio of 1.43:1;
 - (b) as of December 31, 2022, GPOC has failed to maintain a Total Leverage Ratio that does not exceed 2.5:1;
 - (c) as of December 31, 2022, GPOC has failed to maintain Liquidity of not less than \$4,000,000; and
 - (d) as of December 31, 2022, GPOC has failed to maintain an LMR of not less than 2.00 in Alberta.
17. On December 31, 2022, GPOC entered into a waiver agreement with the Lenders (the “**Waiver Agreement**”) whereby the Lenders agreed to waive the Defaults as of year-end 2022. The Lenders reserved their right to declare default in 2023 for ongoing Defaults.
18. However, since the Waiver Agreement, GPOC has continued to default on the Credit Agreement. Aside from a USD\$400,000 payment made on February 1, 2023, GPOC has otherwise failed to make any monthly principal amortization payments since December 31, 2022. Furthermore, beginning in August 2023, GPOC has failed to make any interest payments (collectively, the “**Continued Defaults**”).

Amount Outstanding and Demands

19. Following the Continued Defaults, the Lenders attempted to negotiate a forbearance agreement with GPOC and the Guarantors. On August 8, 2023, the Lenders sent a forbearance agreement to GPOC and the Guarantors and communicated that if the document was not signed by August 11, 2023, then the Lenders would pursue enforcement measures. GPOC and the Guarantors failed to execute the forbearance agreement.
20. As a result, on August 16, 2023, the Lenders issued formal demands for repayment from the Debtor and the Guarantors (the “**Demands**”) and notice to enforce security pursuant to section 244 of the BIA.

21. The Debtor and the Guarantors have refused, failed, neglected, or been unable to pay the amounts pursuant to the Demands.
22. As of August 16, 2023, the Lenders are owed the following amounts:
 - (a) the original principal amount plus 1.4x MOIC equaling USD\$37,938,054.69 owing under the Credit Agreement plus interest accruing thereon; and
 - (b) legal fees, costs, expenses and other charges which are due and payable pursuant to the Credit Agreement (collectively, the “**Indebtedness**”).

The NOI Proceedings

23. Without notice to the Lenders, the Debtor and Guarantors filed NOI’s on August 25, 2023, pursuant to section 50.4(1) of the BIA and Alvarez & Marsal Canada ULC was appointed as the proposal trustee under each NOI.
24. As a result of the filing of the NOIs, all proceedings against GPOC, the Guarantors, and their assets were automatically stayed for an initial period of thirty days, until September 25, 2023 (the “**Initial Stay**”).

Spicelo is Not Insolvent

25. Spicelo is not insolvent and, therefore, its filing of an NOI is improper and an abuse of process.
26. Pursuant to the terms of the Spicelo Guarantee, Spicelo granted, *inter alia*, the Greenfire Securities as collateral for its commitment. The Lender’s security interest in the collateral also includes all substitutions or replacements of, increases and additions to the Greenfire Securities, including any consolidation, subdivision, or reclassification thereof.
27. In the event of a default on the Credit Agreement by GPOC, the Lenders are entitled to seek repayment from Spicelo as a separate and distinct obligation and, in the event of non-payment by Spicelo or GPOC, as the case may be, are entitled to seek enforcement via the Greenfire Securities. Specifically, the Spicelo Guarantee allows the Lenders to, *inter alia*, assume control, sell, transfer, use or otherwise deal with the Greenfire Securities. The Spicelo Guarantee also allows the Lenders to appoint a receiver over the Greenfire Securities.
28. The Greenfire Securities will imminently participate in an initial public offering pursuant to a Plan of Arrangement whereby, *inter alia*, Greenfire and certain Greenfire subsidiaries will merge (the “**New Greenfire**”) pursuant to a Business Combination Agreement dated

December 14, 2022 (as amended on April 21, 2023 and June 15, 2023) (the “**Transaction**”). The Transaction was approved by shareholders on September 11, 2023. It is anticipated that the Transaction will close on September 20, 2023.

29. As part of the Transaction, Spicelo is set to receive a dividend valued at USD\$6,600,000 before withholding tax estimated at 15%, of which the Lenders are entitled to 75%, or USD\$4,950,000, pursuant to section 37(s) of the Spicelo Guarantee (the “**Special Dividend**”). Furthermore, as part of the Transaction, Spicelo will receive 5,506,833 common shares in the capital of New Greenfire (the “**New Greenfire Securities**”) in exchange for the Greenfire Securities. According to the Greenfire Proxy Statement for Special Meeting of Stockholders, the New Greenfire Securities will have an estimated market value of USD\$10.10 per share, resulting in a total of USD\$55,600,000.
30. Spicelo’s secured claims in its NOI total CAD\$52,603,740.74, the overwhelming majority of which belong to the Lenders (CAD\$51,413,652.14 or 97.7%). Based on the combined value of the New Greenfire Securities post-closing and Special Dividend, Spicelo’s assets clearly exceed the value of its liabilities.
31. The Greenfire Securities represent a distinct asset class which is pledged only to the Lenders, and is otherwise completely separate and apart from the operations and affairs of the Other NOI Parties.
32. The value of the Greenfire Securities should be sufficient to see the Indebtedness paid out in full. Such a result would be beneficial to the other creditors of GPOC, including Tamarack as the subordinate lender on the GPOC assets. If the Lenders are paid out in full from the sale of the Greenfire Securities, Tamarack will become the first lien lender on the GPOC assets, and the largest secured creditor will be removed from the GPOC credit matrix.

The Greenfire Securities are Liquid Assets

33. Other than as described in Schedule “A” to the Spicelo Guarantee, no transfer restrictions apply to the Greenfire Securities. Schedule “A” provides, *inter alia*, certain restrictions on the transfer of the Greenfire Securities unless they are completed in accordance with the piggy-back, first refusal, pre-emptive and drag along provisions contained therein (the “**Transfer Restrictions**”). The Transfer Restrictions expire when the Transaction closes on September 20, 2023 (the “**Closing Date**”).
34. Following the Closing Date, the New Greenfire Securities will form part of the Lenders’ security interest pursuant to the terms of the Spicelo Guarantee.

35. Spicelo has advised the Lenders that it has unilaterally executed a Lock Up Agreement (“**LUA**”) that restricts the transfer of the New Greenfire Securities. Relevant definitions set forth in the LUA are as follows:
- (a) “**Transfer**” is defined as the (i) sale or assignment of, offer to sell, contract or agreement to sell, hypothecation, pledge, grant of any option to purchase or other disposal of or agreement to dispose of; directly or indirectly, or establishment or increase of a put equivalent position or liquidation or decrease of a call equivalent position within the meaning of Section 16 of the *Exchange Act* with respect to, any security, (ii) entry into any swap or other arrangement that transfers to another person, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (iii) public announcement of any intention to effect any transaction specified in clause (i) or (ii); and
 - (b) “**Lock Up Period**” is defined as beginning on the Closing Date to the earliest of: (i) the date that is 180 days after the Closing Date, (ii) the date on which the last reported closing price of the New Greenfire Shares equals or exceeds \$12.00 per share for any 20 trading days within any 30 trading day period commencing at least 75 days after the Closing Date; or (iii) the date on which the Company completes a transaction that results in all of the Company’s shareholders having the right to exchange their shares of capital stock for cash, securities or other property.
36. The LUA provides certain exceptions to the Lock Up Period, for example, (i) in connection with a pledge of New Greenfire Shares, or any other securities convertible into or exercisable or exchangeable for New Greenfire Shares, to a financial institution, including the enforcement of any such pledge by a financial institution, or (ii) in connection with any legal, regulatory, or other order. These provisions would permit a Receiver to liquidate the New Greenfire Shares immediately.
37. Further, and more importantly, the Lenders are not parties to the LUA and have never agreed to be bound by its terms. As a result, it is the Lenders position that they are not bound by the Lock Up Period and may enforce their security by liquidating the New Greenfire Shares immediately.
38. In either case, the New Greenfire Shares are liquid assets of Spicelo and capable of being realized upon to satisfy the outstanding Indebtedness.

Spicelo’s Stay of Proceedings should be Terminated

39. Pursuant to section 50.4(11) of the BIA, this Court may terminate Spicelo's NOI Proceedings if it is satisfied that at least one of the following criteria is met:
- (a) Spicelo has not acted, or is not acting, in good faith and with due diligence;
 - (b) Spicelo will not likely be able to make a viable proposal before the expiration of the period in question;
 - (c) Spicelo will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors; or
 - (d) The creditors as a whole would be materially prejudiced if this application was rejected.
40. As a solvent company with sufficient liquid assets to meet its liabilities, Spicelo has not acted in good faith by filing an NOI. Furthermore, Spicelo will not be able to make a proposal that will be accepted by its creditors. The Lenders collectively represent approximately 98% of the creditor claims against Spicelo and will not support a proposal that will substantially delay their repayment when there is sufficient value in the Greenfire Shares to repay the Lenders in full now.
41. As such, this Court should terminate the NOI Proceedings against Spicelo.

A Receiver should be Appointed over Spicelo

42. On September 14, 2023, GPOC and the Guarantors served an application to, *inter alia*, extend the Initial Stay for an additional period of 45-days. The Lenders oppose the extension of the stay with respect to Spicelo.
43. If this Court denies Spicelo's request for an extension of the stay of proceedings, or if this Court otherwise decides to terminate Spicelo's NOI Proceedings pursuant to section 50.4(11) of the BIA, the Lenders intention is to enforce against the Greenfire Securities held by Spicelo as a first recourse to resolving the Indebtedness. Although Spicelo will automatically be deemed bankrupt, the Lender's preference is to execute against the Greenfire Securities by way of a sales process controlled by a Court-Appointed Receiver.
44. In all the circumstances, it is just and equitable that a receiver be appointed over all of the Property of Spicelo since, *inter alia*:
- (a) Spicelo is in default of its obligations under the Spicelo Guarantee;

- (b) The Lenders are secured creditors and delivered notices of intention to enforce security under section 244 of the BIA;
- (c) Spicelo is not insolvent, and its NOI filing was improper;
- (d) The Spicelo Guarantee allows for the appointment of a receiver in the event of a default;
- (e) The Lenders have, at all times, acted in good faith and have given GPOC and the Guarantors more than ample time to remedy the Defaults;
- (f) The immediate appointment of a receiver will allow for orderly realization of the Greenfire Securities in the most efficient and value maximizing manner;
- (g) A Court Appointed Receiver can run a sales process supervised by the Court in a fair and transparent manner;
- (h) A Bankruptcy Trustee sale will be subject to certain statutory provisions in the *Bankruptcy and Insolvency Act*, including the application of a Superintendent of Bankruptcy's levy on any sale proceeds;
- (i) As a result of the Transaction, the Greenfire Securities will no longer be encumbered by any rights of first refusal or other impediments to sale and liquidity, and as a result, a Receiver is best suited to realize on those assets;
- (j) There is no other process available to the Lenders that would enable it to adequately protect its interests;
- (k) The Lenders' position as primary secured creditor is being unnecessarily impacted by various professional fees, administrative charges, and potentially DIP charges if Spicelo continues in the NOI proceedings;
- (l) There is real risk of harm and losses to the Lenders such that each will suffer a shortfall on their security if a Receiver is not appointed, especially if a Bankruptcy Trustee is not able to sell the assets in a value-maximizing manner;
- (m) The balance of convenience supports the appointment of a Receiver; and
- (n) Such further or other grounds.

45. KPMG, the proposed receiver, has consented to act as receiver.

46. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

47. All pleadings and proceedings filed in the within Action;
48. The Affidavit of Dave Gallagher, sworn on September 19, 2023;
49. The Consent to Act of KPMG signed on September 19, 2023;
50. The proposed form of Receivership Order, attached hereto as **Schedule "A"**; and
51. Such further and other material as counsel for the Lender may advise and this Honourable Court may permit.

Applicable rules:

52. The *Alberta Rules of Court*, AR 124/2010, as amended; and
53. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

54. Sections 50.4(11), 243 and 244 of the BIA;
55. Section 13(2) of the Judicature Act;
56. Section 99(a) of the BCA;
57. Section 65(7) of the PPSA; and
58. Such further and other acts and regulations as counsel for the Lenders may advise or this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied on:

59. There are no irregularities complained of or objections relied on.

How the Application is Proposed to be Heard or Considered

60. Via Webex Video Conference, before the Honourable Justice Johnston on September 22, 2023 at 10:00 a.m.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

PROPOSED FORM OF RECEIVERSHIP ORDER