

COURT OF APPEAL OF ALBERTA

Clerk's Stamp

COURT OF APPEAL FILE NUMBER: 2401-014AC

TRIAL COURT FILE NUMBER: 2401-01422

REGISTRY OFFICE: 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 COMPROMISE OR ARRANGEMENT OF GRIFFON PARTNERS OPERATION CORPORATION, GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., STELLION LIMITED, 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO LIMITED

APPLICANT: TAMARACK VALLEY ENERGY LTD.

RESPONDENTS: GRIFFON PARTNERS OPERATION CORPORATION, GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., STELLION LIMITED, 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO LIMITED

NOT PARTIES TO THE APPEAL (MONITOR): ALVAREZ & MARSAL CANADA INC.

NOT PARTIES TO THE APPEAL (PRIMARY LENDERS): TRAFIGURA CANADA LIMITED AND SIGNAL ALPHA C4 LIMITED

DOCUMENT: **AFFIDAVIT OF ELENA PRATT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

OSLER, HOSKIN & HARCOURT LLP
 Brookfield Place, Suite 2700
 225 6 Ave SW
 Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
 Telephone: (403) 260-7000
 Email: rvandemosselaer@osler.com /
jtreleaven@osler.com
 File No.: 1255876

AFFIDAVIT OF ELENA PRATT
SWORN JUNE 5, 2024

I, Elena Pratt, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am a legal assistant with the law firm of Osler, Hoskin & Harcourt LLP, counsel to Spicelo Limited (“**Spicelo**”), one of the Respondents (defined below) in the within Action and as such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I believe such information to be true.
2. Attached as **Exhibit “A”** is a copy of the Brief of Tamarack Valley Energy Ltd. (the “**Applicant**”) filed February 2, 2024 (without Authorities).
3. Attached as **Exhibit “B”** is a copy of the Affidavit of Daryl Stepanic sworn March 15, 2024 (without Exhibits).
4. Attached as **Exhibit “C”** is a copy of the Brief of Griffon Partners Operation Corporation, Griffon Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd. and Spicelo (collectively, the “**Respondents**”) filed March 18, 2024 (without Authorities).
5. Attached as **Exhibit “D”** is a copy of the Brief of the Applicant, filed April 5, 2024 (without Authorities).
6. Attached as **Exhibit “E”** is a copy of the Order (Stay Extension, CCAA Termination, Approval of Monitor’s Actions, Activities and Fees) granted by the Honourable Justice B. Johnston on May 14, 2024.

7. Attached as **Exhibit "F"** is a copy of a letter from Randal Van de Mosselaer, counsel to Spicelo, to the Honourable Justice L. K. Harris dated May 27, 2024 and attaching a proposed Form of Order dated May 14, 2024.
8. Attached as **Exhibit "G"** is a copy of a letter from Matti Lemmens, counsel for the Applicant, to the Honourable Justice L. K. Harris dated May 29, 2024.
9. Attached as **Exhibit "H"** is a copy of correspondence sent by Elise Russell on behalf of the Honourable Justice L. K. Harris to Jakub Maslowski, counsel for the Applicant dated May 30, 2024.
10. I swear this Affidavit in response to the Applicant's Application for permission to appeal the decision of the Honourable Justice L. K. Harris dated May 14, 2024.

SWORN BEFORE ME at Calgary, Alberta,
this 5th day of June, 2024.



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



Elena Pratt

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

This is **Exhibit "A"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, reading "Alyssa Roy", is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

COURT FILE NUMBERS **B201-979735 / 25-2979735**

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.**

DOCUMENT **BENCH BRIEF OF TAMARACK VALLEY
ENERGY LTD.**

MATTI LEMMENS
STIKEMAN ELLIOTT LLP
Barristers & Solicitors
4200 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB T2P 5C5 Canada

Tel: (403) 266 9064
Fax: 403 266 9034

Counsel for Tamarack Valley Energy Ltd.

Hearing via Webex before the Honourable Justice Johnston
on the Calgary Commercial List, on February 6, 2024, commencing at 3:00 p.m.

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	FACTS	4
III.	ISSUE	4
IV.	LAW AND ARGUMENT.....	4
V.	TABLE OF AUTHORITIES	7

I. INTRODUCTION

1. Tamarack Valley Energy Ltd. ("**TVE**") is the second subordinate secured creditor of Griffon Partners Operation Corp. ("**GPOC**") pursuant to a Subordinated Secured Promissory Note in the amount of \$20 million plus interest granted by GPOC in favour of TVE (the "**TVE Promissory Note**").

2. TVE is supportive of the sale of all of the assets of Spicelo Limited ("**Spicelo**") namely all of the common shares of it holds in Greenfire Resources Ltd. (the "**Pledged Shares**"), either by way of the application of Trafigura Canada Limited and Signal Alpha C4 Limited (collectively, the "**Lenders**"), the senior secured creditors of GPOC and Spicelo, to terminate the within Notice of Intention to Make a Proposal proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**NOI Proceedings**") with respect to Spicelo and to appoint Grant Thornton Limited as receiver of all of Spicelo's assets (the "**Receivership Application**"), or by way of GPOC and Spicelo's application to continue the within NOI Proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, and to appoint Alvarez & Marsal Canada Inc. as monitor (the "**Proposed CCAA Proceedings**").

3. TVE respectfully submits that:

- (a) the doctrine of marshalling requires the Lenders to realize upon the entirety of Spicelo's Pledged Shares pursuant to the Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the "**Share Pledge**") between it and the Lenders prior to realizing upon any of proceeds from the sale of all or any portion of GPOC's assets pursuant to the ongoing sale and investment solicitation process (the "**SISP**") in these NOI Proceedings or the Proposed CCAA Proceedings; and
- (b) a determination as to whether Spicelo has any right of subrogation as against GPOC shall be made at the time when proceeds from the sale of the Pledge Shares and the SISP are available for distribution.

II. FACTS

4. The full factual matrix of the NOI Proceedings and the Receivership Application are set forth in detail in the affidavit of David Gallagher, sworn January 29, 2024 and the Lenders' Bench Brief.

5. With respect to TVE's submissions, the relevant facts are as follows:

- (a) The Lenders are the senior secured creditors of GPOC pursuant to a Loan Agreement between the parties dated July 21, 2022 (the "**Loan Agreement**").
- (b) As security for payment of performance of GPOC's obligations under the Loan Agreement, Spicelo and the Lenders entered into the Share Pledge.
- (c) The Lenders are presently owed C\$51,413,652.14 by GPOC and have recourse to recover this debt from two sources: the proceeds from the sale of GPOC's assets under the SISF in the NOI Proceedings, and/or by realizing upon Spicelo's Pledged Shares.
- (d) TVE is the second subordinate secured creditor of GPOC pursuant to the TVE Promissory Note. TVE is owed C\$23,478,356 by GPOC. TVE is not a party to any share pledge agreement with Spicelo and does not have any recourse for recovery of amounts owing by GPOC against Spicelo or any other guarantor.
- (e) As such, TVE's sole source of recovery of the amount owing by GPOC under the TVE Promissory Note is from the proceeds of the SISF.

III. ISSUE

6. Whether the doctrine of marshalling requires the Lenders to realize upon the Pledged Shares.

IV. LAW AND ARGUMENT

7. The equitable doctrine of marshalling dictates that if a creditor has two funds to draw upon to satisfy a debt, the court will require it to take satisfaction from that fund upon which another creditor has no security.¹

¹ *Gerrow v. Dorais*, 2010 ABQB 560 at para. 21.

8. In *Condominium Corp. No. 082 6970 v. 1117398 Alberta Ltd.* ("**111 Alberta Ltd**"), this Court stated the following with respect to the doctrine of marshalling and the requirements for its application:²

Marshalling is a doctrine rooted in a longstanding principle of equity which essentially provides that a "senior" creditor, or a creditor with access to multiple funds to satisfy its debt, should marshal its enforcement in such a way as to cause as little harm as possible to a "junior" creditor, or a creditor with access to only one of the same funds. Equity directs that the senior creditor look first to those funds that the junior creditor does not have access to, in order to avoid needlessly wiping out the junior creditor's security.

Marshalling requires that there be more than one fund to which the senior creditor has recourse, and these funds either belong to the same debtor or relate to the same debt.

9. Marshalling has been applied in situations where two funds available are from a principle debtor and a guarantor.³

10. In the present matter, the Lenders have access to both the Pledged Shares and the proceeds from the sale of GPOC's assets under the SISF, whereas TVE only has access to the latter.

11. TVE understands that the total value of GPOC's assets will not be sufficient to satisfy the amount owing to the Lenders. As such, it is highly probable that there will be no funds available to TVE in the event the Lenders exercise their first priority security and realize upon all of the proceeds from the SISF.

12. As of February 2, 2024, the Pledged Shares were trading at \$5.74 per share, for a value of \$31,567,164. Spicelo is also owed a dividend of \$6.6 million, and therefore the total amount of collateral available to the Lenders under the Share Pledge is \$38,167,164.

13. If the Lenders were to realize upon the Pledged Shares in full and were to recover the remaining balance of the debt owed to it by GPOC from the proceeds of the SISF, there would potentially be funds available to TVE and other unsecured creditors of GPOC.

² *Condominium Corp. No. 082 6970 v. 1117398 Alberta Ltd.*, 2012 ABQB 233 at paras 10 and 11.

³ *Brown v. Canadian Imperial Bank of Commerce*, 1985 CarswellOnt 729 (Ont HC); *Ibid*, at para 30.

14. Under the doctrine of marshalling, as this Court stated in *111 Alberta Ltd.*, “[e]quity directs that the senior creditor look first to those funds that the junior creditor does not have access to, in order to avoid needlessly wiping out the junior creditor's security.”

15. As such, TVE submits that marshalling requires that the Lenders realize upon the Pledged Shares in full, followed by a determination of how the proceeds from the Pledged Shares and the SISP should be marshalled and whether Spicelo has any right of subrogation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 2nd day of February, 2024.

STIKEMAN ELLIOTT LLP

Per:



for **Matti Lemmens**

Counsel to Tamarack Valley Energy Ltd.

This is **Exhibit "B"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.



Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

COURT FILE NUMBER 2401-01422

Clerk's Stamp

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 COMPROMISE OR
ARRANGEMENT OF GRIFFON PARTNERS OPERATION
CORPORATION, GRIFFON PARTNERS HOLDING
CORPORATION, GRIFFON PARTNERS CAPITAL
MANAGEMENT LTD., STELLION LIMITED, 2437801
ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA
LTD., and SPICELO LIMITED

DOCUMENT **AFFIDAVIT OF DARYL STEPANIC**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven

Telephone: (403) 260-7000

Facsimile: (403) 260-7024

Email: RVandemosselaer@osler.com / JTreleaven@osler.com

File Number: 1247318

AFFIDAVIT OF DARYL STEPANIC

SWORN MARCH 15, 2024

I, Daryl Stepanic, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND
SAY THAT:**

1. I am the Chief Executive Officer (“CEO”) and a Director of Griffon Partners Operation Corp. (“GPOC”) and a Director of Griffon Partners Holding Corp. (“GPHC”) and Griffon

Partners Capital Management Ltd. (“**GPCM**”, and together with GPOC and GPHC, the “**Griffon Entities**”). I have been CEO of GPOC and a Director of each of the Griffon Entities since 2022. Prior to joining the Griffon Entities, I held various Vice President, asset manager, and reservoir engineer positions with Burlington Resources, ConocoPhillips and Fractal Energy Resource Holdings Inc., among others. I am a professional engineer with more than 35 years of experience in oil and gas production, exploitation, marketing, corporate development and acquisition activities and hold a Bachelor of Science in Chemical and Petroleum Engineering from the University of Calgary.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I believe such information to be true. I am authorized by the Griffon Entities, Stellion Limited, 2437801 Alberta Limited, 2437799 Alberta Limited, 2437815 Alberta Limited and Spicelo Limited (“**Spicelo**”, and collectively, the “**Applicants**”) to swear this Affidavit.

3. This Affidavit is supplemental to my Affidavit sworn on September 14, 2023, and filed on September 15, 2023 in Action No. 25-2979735, (the “**September 14 Affidavit**”) the entire contents of which I hereby adopt and affirm, and is made in further support of the Applicants’ application for an Order:

- (a) declaring that Tamarack Valley Energy Ltd. (“**Tamarack**”) has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling or otherwise;
- (b) declaring that Signal Alpha C4 Limited and Trafigura Canada Ltd. (collectively, the “**Lenders**”) are not required, pursuant to the doctrine of marshalling or otherwise, to exhaust their remedies under the Limited Recourse Guarantee and

Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”) granted to the Lenders by Spicelo and the securities owned by Spicelo in the capital of Greenfire Resources Ltd. (the “**Spicelo Pledged Shares**”) prior to the Lenders realizing upon any of the proceeds from the SISP (as that term is defined in the February 7, 2024 Amended and Restated Initial Order in these proceedings); and

(c) declaring that:

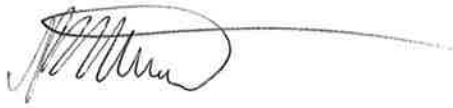
- (i) upon payment of all amounts owing to the Lenders pursuant to the Loan Agreement dated July 21, 2022, as amended as of August 31, 2023; and
- (ii) to the extent that Spicelo is required to make payment to the Lenders pursuant to the terms of the Spicelo Guarantee by which Spicelo unconditionally guaranteed the due and punctual payment, and the due performance of the Guaranteed Obligations (as that term is defined in the Spicelo Guarantee);

then Spicelo is, to the extent of such payment to the Lenders under the Spicelo Guarantee, entitled to be subrogated to the Lenders’ security against GPOC, in priority to Tamarack.

4. On July 21, 2022, GPOC issued a Subordinated Secured Promissory Note in the amount of CAD\$20,000,000 to Tamarack (the “**Tamarack Note**”) and granted to Tamarack a security interest (subordinate to the Lenders’ security interest) in all of GPOC’s present or after-acquired property. No other security interests were granted to Tamarack by any of the other the Applicants.

5. Specifically, Spicelo is not Tamarack's debtor, and Spicelo owes no obligations to Tamarack. Accordingly, Spicelo has not granted Tamarack any sort of security interest or any other interest in any of the Spicelo Pledged Shares, and the only interest in the Spicelo Pledged Shares that Spicelo has granted to any creditor has been granted to the Lenders pursuant to the Spicelo Guarantee.

SWORN BEFORE ME at Calgary, Alberta,
this 15th day of March, 2024.



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



Daryl Stepanic

RIYANA MANERIKAR
Student-at-Law

This is **Exhibit "C"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, appearing to read 'Alyssa Roy', is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027



COURT FILE NUMBER 2401-01422
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 COMPROMISE OR
ARRANGEMENT OF GRIFFON PARTNERS OPERATION
CORPORATION, GRIFFON PARTNERS HOLDING
CORPORATION, GRIFFON PARTNERS CAPITAL
MANAGEMENT LTD., STELLION LIMITED, 2437801
ALBERTA LTD., 2437799 ALBERTA LTD., 2437815
ALBERTA LTD., and SPICELO LIMITED

APPLICANTS GRIFFON PARTNERS OPERATION CORPORATION,
GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON
PARTNERS CAPITAL MANAGEMENT LTD.,
STELLION LIMITED, 2437801 ALBERTA LTD., 2437799
ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO
LIMITED

DOCUMENT **BENCH BRIEF OF THE APPLICANTS**

ADDRESS FOR SERVICE **OSLER, HOSKIN & HARCOURT LLP**
AND CONTACT Barristers & Solicitors
INFORMATION OF Brookfield Place, Suite 2700
PARTY FILING THIS 225 6 Ave SW
DOCUMENT Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000
Facsimile: (403) 260-7024
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1247318

**APPLICATION BEFORE THE HONOURABLE JUSTICE GILL ON MARCH 25,
2024 AT 2:00 PM ON THE COMMERCIAL LIST**

Table of Contents

	Page
I. INTRODUCTION	1
II. FACTS AND BACKGROUND	2
Secured Debt of the Griffon Entities and Spicelo.....	2
The Applicants' Insolvency Proceedings.....	4
III. ISSUES	5
IV. LAW AND ARGUMENT	6
A. Marshalling and Subrogation.....	6
V. CONCLUSION AND RELIEF SOUGHT	17

I. INTRODUCTION

1. This Bench Brief is submitted on behalf of the applicants, Griffon Partners Operation Corp. (“**GPOC**”), Griffon Partners Holding Corp. (“**GPHC**”), Griffon Partners Capital Management Ltd. (“**GPCM**”, and together with GPOC and GPHC, the “**Griffon Entities**”), Stellion Limited, 2437801 Alberta Limited, 2437799 Alberta Limited, 2437815 Alberta Limited, and Spicelo Limited (“**Spicelo**”) (collectively, the “**Applicants**”).
2. The Applicants seek an Order, *inter alia*:
 - (a) declaring that Tamarack Valley Energy Ltd. (“**Tamarack**”) has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling or otherwise;
 - (b) declaring that Signal Alpha C4 Limited and Trafigura Canada Ltd. (collectively, the “**Lenders**”) are not required, pursuant to the doctrine of marshalling or otherwise, to exhaust their remedies under the Spicelo Guarantee (as that term is defined below) granted to the Lenders by Spicelo and the shares pledged to the Lenders by Spicelo (the “**Pledged Shares**”) prior to the Lenders realizing upon any of proceeds from the SISP (as that term is defined in the February 7, 2024 Amended and Restated Initial Order in these proceedings); and
 - (c) declaring that:
 - (i) upon payment of all amounts owing to the Lenders pursuant to the Amended Loan Agreement (as that term is defined below); and
 - (ii) to the extent that Spicelo is required to make payment to the Lenders pursuant to the terms of the Spicelo Guarantee by which Spicelo unconditionally guaranteed the due and punctual payment, and the due performance of the Guaranteed Obligations (as that term is defined in the Spicelo Guarantee);

then Spicelo is, to the extent of such payment to the Lenders under the Spicelo Guarantee, entitled to be subrogated to the Lenders’ security against GPOC, in priority to Tamarack.

3. In short, the Applicants have had financial difficulties, necessitating the filing of Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) on August 25, 2023. These proceedings were subsequently converted into proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) on February 6, 2024.
4. In connection with the February 6, 2024 application, and with no Application or other explanation, Tamarack’s counsel filed a Bench Brief incorrectly asserting that: “the doctrine of marshalling requires the Lenders to realize upon the entirety of Spicelo’s Pledged Shares pursuant to the [Spicelo Guarantee] between it and the Lenders prior to realizing upon any of proceeds from the sale of all or any portion of GPOC’s assets pursuant to the ongoing [SISP].”
5. The Applicants submit that this is a gross mischaracterization of the doctrine of marshalling. It is further submitted that the doctrine of marshalling has no application in the circumstances of this case, and to the relationships between the Griffon Entities, Spicelo, the Lenders, and Tamarack. Further, as the SISP is nearing its conclusion, it is critical that the rights and obligations of the Griffon Entities, Spicelo, the Lenders and Tamarack be determined so that all parties can be certain of their rights of recovery from the assets belonging to the Griffon Entities under the SISP, and from Spicelo.

II. FACTS AND BACKGROUND

Secured Debt of the Griffon Entities and Spicelo

6. The Griffon Entities’ business is focused on the exploration and development of light oil and natural gas liquids in the Viking formation in western Saskatchewan and eastern Alberta. Each of the Griffon Entities are private corporations existing under the laws of the Province of Alberta, with their registered offices in Calgary, Alberta.

Affidavit of Daryl Stepanic, sworn September 14, 2023 (the “**Stepanic Affidavit**”) at paras 6, 13.

7. Spicelo is an investment company incorporated pursuant to the laws of Cyprus and extra-provincially registered in Alberta. Spicelo is beneficially owned by Jonathan Klesch, one of the directors of the Griffon Entities.

Stepanic Affidavit at paras 7-8, 11.

8. GPOC is the borrower (and GPCM and GPHC are guarantors) under a Loan Agreement dated July 21, 2022 with the Lenders as lenders, GLAS USA LLC as administrative agent, and GLAS Americas LLC as collateral agent (the “**Collateral Agent**”) as amended as of August 31, 2022 (the “**Amended Loan Agreement**”), pursuant to which:

- (a) GPOC borrowed approximately USD\$36 million from the Lenders, and
- (b) GPOC granted to the Collateral Agent a security interest (the “**Lenders’ Security Interest**”) over all of GPOC’s present and after-acquired real and personal property.

Stepanic Affidavit at paras 11, 26-30.

9. In addition, GPOC issued a Subordinated Secured Promissory Note dated July 21, 2022 in the amount of CAD\$20 million to Tamarack (the “**Subordinated Tamarack Note**”), and granted to Tamarack a security interest (subordinate to the Lenders’ Security Interest) in all of GPOC’s present or after-acquired property.

Stepanic Affidavit at para 31.

10. GPOC, Tamarack, and the Collateral Agent are party to an Intercreditor Agreement, dated July 21, 2022 (the “**Intercreditor Agreement**”) pursuant to which Tamarack agreed to subordinate all security interests granted with respect to the Subordinated Tamarack Note to all senior loan obligations outstanding under the Amended Loan Agreement. Accordingly, the Lenders are the senior secured creditor against GPOC and its assets, and Tamarack is a subordinated secured creditor against GPOC and its assets.

Stepanic Affidavit at para 33.

11. Spicelo entered into a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”) pursuant to which:

- (a) Spicelo guaranteed GPOC’s obligations to the Lenders under the Amended Loan Agreement, and
- (b) Spicelo pledged to the Collateral Agent for the benefit of the Lenders securities owned by Spicelo in the capital of Greenfire Resources Ltd. (the “**Spicelo Pledged Shares**”).

Stepanic Affidavit at para 29(c).

12. As a result of the above:

- (a) The Lenders and the Collateral Agent are the senior secured creditors over GPOC’s present and after-acquired property, and Tamarack’s security interest is subordinate to that of the Lenders and Collateral Agent; and
- (b) The Collateral Agent (and only the Collateral Agent) holds a security interest over the Spicelo Pledged Shares. Tamarack has no claim whatsoever against Spicelo or the Spicelo Pledged Shares.

The Applicants’ Insolvency Proceedings

13. On August 16, 2023, the Lenders served each of the Applicants with Demands for Payment and Notices of Intention to Enforce Security pursuant to s. 244 of the BIA (the “**Demands**”).

Stepanic Affidavit at para 48.

14. In response to the Demands, on August 25, 2023, the Applicants each filed a Notice of Intention to Make a Proposal under the BIA.

Stepanic Affidavit at para 49.

15. On October 18, 2023 the Court granted an Order approving a Sale and Investment Solicitation Process (“SISP”) pursuant to which the assets of GPOC were to be marketed and sold. The SISP is nearing its conclusion.

Affidavit of Daryl Stepanic, sworn January 29, 2024 at paras 71-72.

16. It appears that the proceeds from the SISP and the sale of the GPOC assets will not satisfy in full the amount outstanding to the Lenders. Consequently, it is anticipated that the Lenders will call upon Spicelo Guarantee in an effort to be paid in full. This will necessitate a liquidation of at least some of the Spicelo Pledged Shares.
17. On February 2, 2024 Tamarack’s counsel filed and served a Bench Brief asserting that: “the doctrine of marshalling requires the Lenders to realize upon the entirety of Spicelo’s Pledged Shares pursuant to the [Spicelo Guarantee] between it and the Lenders prior to realizing upon any of proceeds from the sale of all or any portion of GPOC’s assets pursuant to the ongoing [SISP].” The Applicants submit that this is incorrect as a matter of law, and is a misstatement of the doctrine of marshalling.

III. ISSUES

18. This Bench Brief addresses the following issues:
 - (a) The doctrine of marshalling does not apply on the facts of this case, and
 - (b) In the event that Spicelo is required to make payment to the Lenders pursuant to the terms of the Spicelo Guarantee, Spicelo shall be entitled, upon payment of all amounts owing to the Lenders, to be subrogated to the Lenders’ security against GPOC, in priority to Tamarack.

IV. LAW AND ARGUMENT

A. Marshalling and Subrogation

Marshalling is not available on the facts of this case

19. The doctrine of marshalling is an equitable remedy, intended to protect the recovery of a junior creditor against the arbitrary action of a senior creditor, and to thereby treat all secured creditors equitably. In short, this doctrine is intended to prevent a secured creditor who can resort to two funds of a debtor from defeating another secured creditor who can resort to only one fund belonging to that debtor.

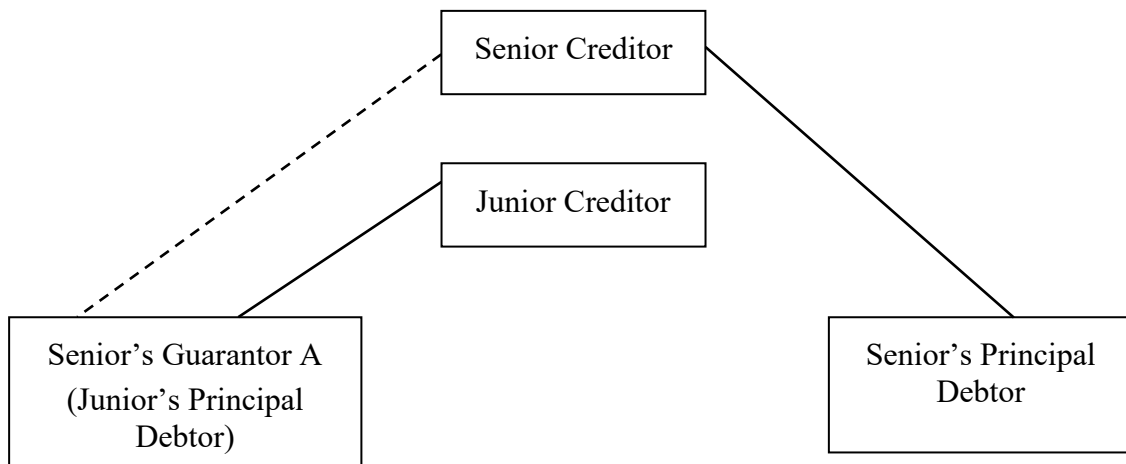
Wolfe et al v Taylor et al, 2020 MBCA 44 [*Wolfe*] at para 31 [Tab 9].
Green v Bank of Montreal, 1999 CarswellOnt 3954 [*Green*] at para 10 [Tab 5].

20. Although Tamarack provides a general description of marshalling consistent with the above, its further statement that “[m]arshalling has been applied in situations where two funds available are from a principle [*sic*] debtor and a guarantor” omits key context. While this statement may be true on certain facts, the fact that it omits key facts means that it is overly broad. A review of the relevant authorities makes clear that the doctrine of marshalling does not apply on the facts of this case.
21. Taking a step back, in order to obtain marshalling, it is well established that certain specific criteria must be met. Most notably, these criteria include the requirement that two or more creditors share a single common debtor; and the senior creditor has a claim against two of that debtor’s funds, while the junior creditor, ranking behind the doubly secured senior creditor, has recourse to only one of that debtor’s funds. This is sometimes referred to as the “Single Debtor Rule”.

Wolfe at para 33 [Tab 9].

22. In this case, these criteria are not satisfied. Most importantly, the Single Debtor Rule is not satisfied. The two funds in this case (being the GPOC assets and the Spicelo Pledged Shares) do not belong to a single debtor – one belongs to the principal debtor (GPOC) and the other belongs to the guarantor (Spicelo).

23. If this were the end of the matter, then the outcome would be obvious. But Tamarack is attempting to rely upon an exception to the Single Debtor Rule. This is sometimes referred to as the “Surety Exception” to the Single Debtor Rule that has developed in the jurisprudence. But an examination of the Surety Exception to the Single Debtor Rule makes clear the Surety Exception does not apply on the facts of this case. In fact, the facts of this case are the precise opposite of the Surety Exception to the Single Debtor Rule.
24. Specifically, under the Surety Exception to the Single Debtor Rule, marshalling can be applied where there are two debtors – a principal debtor and a guarantor – and:
- (a) the senior creditor has security against the assets of both the principal debtor and the guarantor (“A”);
 - (b) the junior creditor has security only against the assets of A, and
 - (c) the senior creditor seeks to enforce its security against its guarantor A (to the detriment of the junior creditor which only has security against the property of A.)
25. This scenario can be illustrated as:



*Solid lines represent primary obligations.

*Dotted line represents guarantee.

26. In such a case, the junior creditor can invoke the doctrine of marshalling (and rely on the Surety Exception to the Single Debtor Rule) in order to have the senior creditor’s claim paid first by the principal debtor.

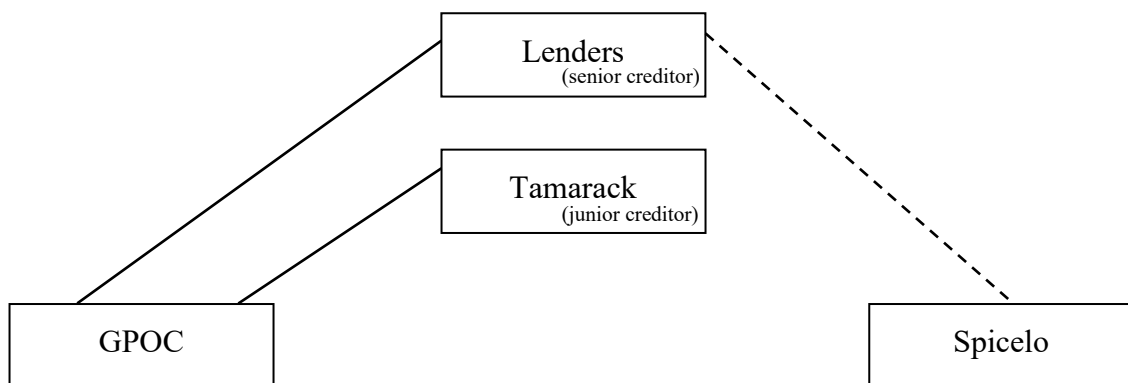
Wolfe at para 60 [Tab 9].

Brown v Canadian Imperial Bank of Commerce, 1985 CarswellOnt 729 [Brown] at paras 11-12 [Tab 2].

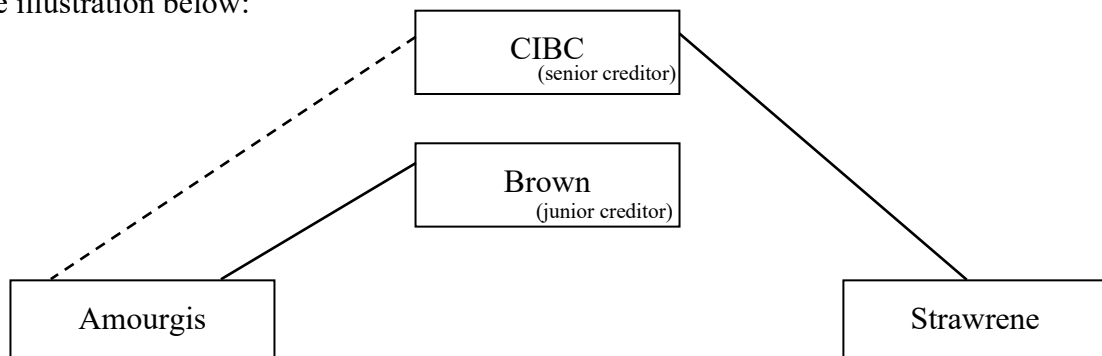
Quay v Sculthorpe, 1869 CarswellOnt 110 [Tab 6].

See also Halsbury's Laws of Canada (online), Guarantee and Indemnity, "The Rights of a Surety: As Against the Creditor: Securities in Favour of the Creditor" (V.1.(5)) at HGI-234 "Surety Entitled to Securities Received by Creditor from Principal" (2022 Reissue) [Tab 10].

27. The logic behind the surety exception is clear. Where the senior creditor has potential claims against both its principal debtor and a guarantor, but the junior creditor has only a principal claim against the senior creditor's guarantor, the senior creditor should not be able to claim first against its guarantor, depriving the junior creditor of any recovery. The principal debtor has certain obligations owing to its guarantor at law (namely, one of indemnity), which is why it, and not the guarantor, should bear primary responsibility for the debt in such circumstances.
28. However, importantly, these are not the facts of our case. In fact, the present case is the precise opposite of the Surety Exception to the Single Debtor Rule. In our case:
 - (a) the senior creditor has security against the assets of both the principal debtor and the guarantor;
 - (b) the junior creditor has security only against the assets of the principal debtor, and
 - (c) the senior creditor seeks to enforce its security against the principal debtor.
29. This structure can be illustrated as:



30. The differences between these two situations is clear:
- (a) In the Surety Exception to the Single Debtor Rule the senior creditor and the junior creditor both have security against the senior creditor's guarantor's assets, and the senior creditor is attempting to enforce its security against the guarantor rather than its principal debtor; whereas
 - (b) On the facts of our case, the senior creditor and the junior creditor both have security against the senior creditor's principal debtors' assets, and the senior creditor is attempting to enforce its security against the principal debtor rather than the guarantor.
31. Tamarack is therefore attempting to create what might be called a "reverse surety exception". But such an exception is illogical, contrary to established law, and untenable at law.
32. Notably, Tamarack is unable to provide a single authority where this reverse surety exception has been applied to invoke the doctrine of marshalling. In particular, Tamarack cites *Brown v. CIBC*, but this case merely followed the typical Surety Exception to the Single Debtor Rule. Specifically, in *Brown* the mutual debtor ("**Amourgis**") was a guarantor with respect to the senior lender CIBC and was also the principal debtor with respect to the junior lender Brown. As security for the guarantee, Amourgis granted CIBC a mortgage over her property on D Street. Amourgis also granted Brown a subordinate mortgage on the same D Street property. Strawrene was the principal debtor to CIBC, and as security for its obligation, Strawrene granted CIBC security over its A street property. As such, this was a classic Surety Exception to the Single Debtor Rule, as can be seen in the illustration below:



33. In *Brown*, CIBC (as the senior lender) could either look to the A Street mortgage (granted by the principal, Strawrene) or the D Street mortgage (granted by the guarantor, Amourgis) to satisfy its debt. Brown (the subordinate secured creditor) brought an application for marshalling, requiring CIBC to first satisfy itself from the principal debtor before enforcing against Amourgis. The Ontario Supreme Court granted such a marshalling order.
34. However, *Brown* was the traditional Surety Exception to the Single Debtor Rule situation, and not the reverse surety exception which Tamarack is seeking to create and have applied for the first time in the history of Canadian law. For reasons we will further discuss below, such an exception to the single common debtor rule would be both completely illogical and untenable at law, as it would create inconsistencies in the law.
35. Tamarack also cites *Condominium Corp. No. 082 6970 v. 1117398 Alberta Ltd.* for the principle that marshalling does not require that the two funds at issue belong to the same debtor, that it is sufficient that they simply relate to the same debt. Although *111 Alberta Ltd.* does contain broad language regarding the availability of marshalling, a review of its underlying facts indicates it did not actually involve a guarantee or surety at all. Therefore, as discussed in further detail below, this decision can be distinguished and has no application here.

Condominium Corp No 082 6970 v 1117398 Alberta Ltd., 2012 ABQB 233 [*111 Alberta Ltd*] at para 11 [**Tab 3**].

36. Accordingly, there is clear authority for the proposition that: (a) marshalling only applies where there is a single debtor, unless (b) the Surety Exception to the Single Debtor Rule applies (as described above), and (c) the facts in the present case do not fit within the Surety Exception to the Single Debtor Rule, and in fact are the complete opposite of that exception.
37. Moreover, there are compelling reasons for the existence of the Surety Exception to the Single Debtor Rule, and for not expanding the exception to the reverse facts as urged by Tamarack:

- (a) It would be inequitable for a creditor to fail to realize against a security which is available to the creditor in respect of the guaranteed debt, and instead to throw the whole liability upon the surety. Therefore, in circumstances where the senior creditor of both the principal debtor and surety seeks payment from the surety—to the detriment of the junior creditor of the surety which has access only to the property of the surety – the Surety Exception should permit that junior creditor to invoke marshalling.
- (b) In any case, applying marshalling in the reverse case as suggested by Tamarack would either not lead to any greater recovery for Tamarack (for the reasons outlined below), or would result in a decision which be entirely inconsistent with the established law that a guarantor who has paid the principal debtor’s debt is entitled to be subrogated to any security interest that the creditor has in respect of the debt.

Wolfe at paras 59-60 [**Tab 9**].

- 38. As discussed more fully below, even if the Lenders were required to first realize against Spicelo’s Pledged Shares, Spicelo would then become the senior creditor of GPOC, benefitting from the Lenders first ranking security against GPOC’s assets and outranking Tamarack in the process. In other words, invoking marshalling in the present circumstance would be completely pointless.
- 39. For these reasons, it is submitted that it is clear that the doctrine of marshalling is not available to Tamarack to give Tamarack access to any recovery either against Spicelo, or to compel the Lenders to seek recovery first against their guarantor, Spicelo.

Even if marshalling order was made, subrogation would apply

- 40. As mentioned above, even if the Lenders were required to first realize against Spicelo’s Pledged Shares (as urged by Tamarack in its Bench Brief), the doctrine of subrogation would apply, meaning that Spicelo would step into the Lenders’ shoes to receive the benefit the Lenders’ security against GPOC.

41. The doctrine of subrogation provides that a surety who has paid the principal debtor's debt is entitled to be subrogated to any security interest that the creditor has in respect of the debt in order to be indemnified for the amounts paid. For example, suppose that A lends money to B and is given a security interest in B's property. C also guarantees repayment of B's debt by granting a guarantee to A. If C pays B's debt which is owed to A, C is entitled to be subrogated to the security interest that A holds against B. Even if B is bankrupt, C is nevertheless able to assert the security interest against B's trustee.

Roderick J. Wood, *Bankruptcy & Insolvency Law*, 2nd ed (Irwin Law, 2015) at 138 [Tab 12].

See also Kevin P. McGuinness, *The Law of Guarantee*, 3rd ed (LexisNexis, 2013) at §10.153 [Tab 11].

42. This principle has been repeatedly confirmed by Canadian courts in many binding authorities, both within the context of marshalling and not. There is no doubt that it remains good law.
43. Specifically, in *Royal Bank v. Fox*, the Supreme Court of Canada confirmed that a guarantor discharging the principal debtor's liability becomes subrogated to the rights of the creditor and stands in the shoes of the creditor, with all the rights to which it was entitled (acknowledging that in this case the court was considering rights the paying guarantor had against other guarantors).

Royal Bank v Fox, [1976] 2 SCR 2 at para 8 [Tab 7].

44. Similarly, the Alberta Court of Appeal confirmed that if a guarantor pays a creditor the guaranteed debt, that guarantor becomes subrogated to the rights of the creditor so paid, giving the guarantor every remedy, every security and every means of payment the creditor had (again, much like above, this case specifically concerned rights between the guarantors).

Trinier v Shurnaik, 2011 ABCA 314 at paras 32-33 [Tab 8].

45. Although the two higher court decisions cited above are specifically in the co-guarantor context, the same principles hold as between guarantor and principal debtor. For example,

in *Bank of Montreal v. Ladacor AMS Ltd* the Alberta Court of Queen's Bench explained that where a guarantor pays off a claim against the principal debtor, the guarantor is entitled to be subrogated to that claim, and to stand in the creditor's shoes with respect to any security it held against the principal debtor.

Bank of Montreal v Ladacor AMS Ltd, 2019 ABQB 985 at paras 45-47 [**Tab 1**].

46. The doctrine of subrogation is in fact the reason for the Surety Exception to the Single Debtor Rule discussed above which allows the doctrine of marshalling to be applied where the senior creditor seeks payment from the guarantor to the detriment of the junior creditor, which has access only to the property of the senior's guarantor. This is because if the senior creditor did in fact obtain payment from the guarantor first, then that guarantor would then have a subrogated claim against the principal debtor, the proceeds of which could ultimately end up going to the junior creditor because the junior creditor still has its claim against the guarantor. An order of marshalling in such circumstances is entirely consistent with the concept of subrogation, merely shortcutting the process such that the senior creditor must claim against the principal debtor first (or in the alternative, allowing the junior creditor to enforce its security against the principal debtor).
47. In other words, the Surety Exception to the Single Debtor Rule arises entirely because of a principal debtor's obligations to the surety (specifically those involving indemnity and subrogation). Since a surety does not have corresponding obligations to the principal debtor, there is no reason at law to accept Tamarack's arguments in favour of a reverse surety exception.

Wolfe at paras 60-61 [**Tab 9**].

48. Not only are Tamarack's arguments incorrect as a matter of law, practically speaking, granting the order it seeks would not lead to any greater recovery for Tamarack.
49. In these circumstances, the Limited Recourse Guarantee does not waive any rights of subrogation. It acknowledges that such rights exist, although the right of subrogation cannot be exercised until the Lenders are repaid in full.

Limited Recourse Guarantee (attached as Exhibit “L” to the Stepanic Affidavit), s. 13.

50. Given this, even if the Lenders were required to first realize against Spicelo’s Pledged Shares (as Tamarack has suggested – but for which proposition there is no support at law), the doctrine of subrogation would apply as soon as the Lenders were fully repaid, allowing Spicelo to step into the Lenders’ shoes and benefit from the Lenders’ security against any remaining assets of GPOC ahead of Tamarack, and ultimately not leading to any greater recovery for Tamarack.

Tamarack seeks marshalling in breach of the Intercreditor Agreement

51. It should also be noted that Tamarack seeking marshalling here is itself a breach of the Intercreditor Agreement between the Lenders, Tamarack and GPOC. The Intercreditor Agreement prohibits Tamarack from taking any Enforcement Action (a) unless it has given the Lenders 180 days’ notice, and (b) in any case, as long as the Lenders are precluded from enforcement themselves due to insolvency proceedings. Suffice to say, Tamarack has not given the Lenders the required notice and, in any event, the Lenders are precluded from enforcement due to the CCAA proceedings.

Intercreditor Agreement (attached as Exhibit “O” to the Stepanic Affidavit), s. 5.1(1).

52. Note that the Intercreditor Agreement specifically defines Enforcement Action in part as any “step or proceeding ... to ... exercise any of its rights or remedies”, including “commenc[ing] judicial enforcement of any of the rights and remedies ... under applicable law”. Bringing this application seeking marshalling is a breach of these provisions, as Tamarack clearly seeks judicial enforcement and recognition of its rights as a secured creditor.

Intercreditor Agreement, s. 1.1, s.v.

53. Tamarack’s application is thus in breach of the Intercreditor Agreement. This Court should not grant an order for equitable relief which would have the effect of sanctioning a breach of contract.

111 Alberta Ltd. can be distinguished

54. In its Bench Brief, Tamarack places a great deal of reliance on a single line from the decision of *111 Alberta Ltd.* However, it is important to note (as we have done above) that *111 Alberta Ltd.* can be distinguished and has no application to the current facts.
55. Although *111 Alberta Ltd.* contains a broad statement that seemingly permits marshalling where the two funds at issue “either belong to the same debtor or relate to the same debt” it is important to note two things: (a) the case apparently does not involved a guarantee, and hence the statement is *obiter dicta*, and, in any case (b) the factual circumstances of *111 Alberta Ltd.* significantly differ from the facts of the present case, meaning the decision is not at all instructive in the present case. (The statement above is actually correct to the extent that it refers to the Surety Exception to the Single Debtor Rule, but is overly broad.)
56. Although the facts of *111 Alberta Ltd.* are difficult to fully ascertain from the judgment, it is important to note that nowhere does the decision anywhere make any reference to a “guarantee”, “guarantor” or “surety”. There is therefore no reason to believe that *111 Alberta Ltd.* involved a guarantee or suretyship in any way, much unlike the current circumstances which centre around the Limited Recourse Guarantee as a key fact. Accordingly, there is no reason to believe that *111 Alberta Ltd.* is authority for the “reserve surety exception” urged by Tamarack.
57. Further, in *111 Alberta Ltd.*, the court stated that there was no evidence or explanation for why the two debtors would have security rights against one another. This significantly differs from the facts in the present case where (as discussed above) after realization against the Pledged Shares, Spicelo would have a first ranking security interest against GPOC under the doctrine of subrogation.

111 Alberta Ltd., para 40 [Tab 3].

58. The Court also notes in *111 Alberta Ltd.* that there is no evidence or explanation advanced about a potential breach of contract. However, as discussed above, Tamarack seeking marshalling here is itself a breach of the Intercreditor Agreement.

111 Alberta Ltd, para 40 [Tab 3].

59. Accordingly, it is clear that the facts of the present case differ substantially from the facts at issue in *111 Alberta Ltd*. Therefore, the decision has no application and does not provide the necessary foundation to depart from the established jurisprudence requiring the two funds at issue to both belong to the same debtor (absent a narrow surety exception) in order to invoke the doctrine of marshalling, and *111 Alberta Ltd*. provides no authority for the “reserve surety exception” urged by Tamarack.

Marshalling would cause prejudice to Spicelo’s other stakeholders

60. Since marshalling is an equitable remedy, it is not available if it causes prejudice to a third party.

Wolfe at para 38 [Tab 9].

111 Alberta Ltd at para 34-41 [Tab 3].

First Investors Corp v Veeradon Developments Ltd, 1988 CarswellAlta 9 at para 12 [Tab 4].


61. In this case, Spicelo is effectively a third party from the perspective of Tamarack. Spicelo is a stranger to the obligations between GPOC and Tamarack, but Tamarack is seeking to benefit from the security Spicelo granted to the Lenders. Effectively, Spicelo would be forced to grant security to Tamarack for GPOC’s obligations, which is not what Spicelo bargained for when it entered into the Limited Recourse Guarantee.
62. While Spicelo agreed to make the Pledged Shares available on a limited recourse basis to the Lenders, Spicelo did not consent to make the Pledged Shares available to satisfy the obligations of any other creditors, including Tamarack. If Tamarack’s application is not granted, then Spicelo will be entitled to any remaining value from the Pledged Shares after GPOC’s obligation to the Lenders has been satisfied. If Tamarack’s application is granted, then effectively Tamarack will be permitted to satisfy part of GPOC’s obligation to Tamarack out of the value of the Pledged Shares – a result which neither Spicelo nor Tamarack bargained for.

63. Granting marshalling in these circumstances would prejudice Spicelo and its shareholders. Marshalling would also prejudice any creditors of Spicelo who might have recourse to the Pledged Shares. An equitable remedy such as marshalling should not be granted in the face of such prejudice.

V. CONCLUSION AND RELIEF SOUGHT

64. For the foregoing reasons, the Applicants respectfully submit that this Court should grant an Order substantially in the form of as Schedule “B” to the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of March, 2024.



Randal Van de Mosselaer / Julie Treleaven
Osler, Hoskin & Harcourt LLP
Counsel for the Applicants

This is **Exhibit "D"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, reading "Alyssa Roy", is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2024

Clerk's Stamp

COURT FILE NUMBERS

2401-01422

COURT

COURT OF KING'S BENCH OF ALBERTA

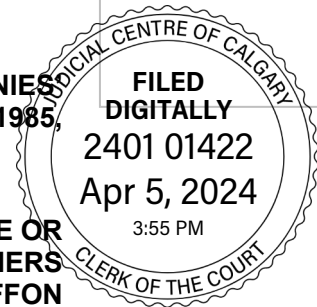
JUDICIAL CENTRE

CALGARY

MATTERS

**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 GRIFFON PARTNERS
OPERATION CORPORATION, GRIFFON
PARTNERS HOLDING CORPORATION, GRIFFON
PARTNERS CAPITAL MANAGEMENT LTD.,
STELLION LIMITED, 2437801 ALBERTA LTD.,
2437799 ALBERTA LTD., 2437815 ALBERTA
LTD., and SPICELO LIMITED**



DOCUMENT

BRIEF OF TAMARACK VALLEY ENERGY LTD.

MATTI LEMMENS
STIKEMAN ELLIOTT LLP
Barristers & Solicitors
4200 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB T2P 5C5 Canada

Tel: 403 266 9064

Fax: 403 266 9034

Counsel for Tamarack Valley Energy Ltd.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS	1
	The Debtors	1
	The Asset Purchase and Sale Transaction	3
	Default by GPOC	5
	The NOI and CCAA Proceedings	6
III.	ISSUES	8
IV.	LAW AND ARGUMENT	8
	The Doctrine of Marshalling	8
	Two Creditors	10
	Exception to the Single Common Debtor Rule	10
	Funds Available to Senior and Junior Secured Creditors	13
	The Funds Must Be In Existence	13
	No Prejudice to the Lenders	13
	No Prejudice to Third Parties	13
	Subrogation	14
	Waiver of Right of Subrogation	14
	Subrogation and Equity	16
	The Doctrine of Equitable Subordination	20
V.	CONCLUSION	22
VI.	TABLE OF AUTHORITIES	23

I. INTRODUCTION

1. Tamarack Valley Energy Ltd. (“**TVE**”) is the second secured creditor of Griffon Partners Operation Corp. (“**GPOC**”) pursuant to a Subordinated Secured Promissory Note in the amount of \$20 million plus interest granted by GPOC in favour of TVE (the “**TVE Promissory Note**”).

2. In this Application, TVE seeks an order directing that the equitable doctrine of marshalling applies such that GPOC’s senior secured creditors, Trafigura Canada Limited and Signal Alpha C4 Limited, and/or their agents GLAS USA LLC or GLAS Americas LLC (collectively, the “**Lenders**”), must first realize upon the entirety of shares pledged by GPOC’s guarantor, Spicelo Limited (“**Spicelo**”), pursuant to a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 between it and the Lenders (the “**Share Pledge**”), prior to realizing upon any proceeds from the sale of all or any portion of GPOC’s assets pursuant to the sale and investment solicitation process (the “**SISP**”) in these proceedings.

3. The foregoing would allow TVE and GPOC’s other creditors to potentially recover some of the funds duly owing to them by GPOC. The alternative scenario, whereby the Lenders would enforce against the proceeds of the SISP first and then against the Share Pledge would have the effect of needlessly wiping away GPOC’s second secured creditors’ security, leaving TVE with nothing for the over \$23 million secured debt owed to it.

4. Further, TVE seeks an order preventing Spicelo from advancing a subrogated claim against GPOC in the Lenders’ senior secured position, or at all, pursuant to the terms of the Share Pledge and at equity.

II. FACTS

The Debtors

5. GPOC is an entity incorporated on June 7, 2022. It is a wholly-owned subsidiary of Griffon Partners Holding Corporation (“**GPHC**”), which in turn is wholly-owned by Griffon Partners Capital Management Ltd. (“**GPCM**”).

6. GPCM is in turn owned by four holding companies, including Stellion Limited (“**Stellion**”), which is beneficially owned by Jonathan Klesch.¹

7. Stellion owns 25% of GPCM via 1 Class A share. It also owns 79.5% of GPCM’s Class B shares.² According to Mr. Klesch, the reason why Stellion owns so much of GPCM’s Class B shares is that he was the only shareholder risking anything by offering Spicelo’s Pledged Shares as a

¹ Affidavit of Daryl Stepanic, affirmed on January 29, 2024 at para 14.

² Transcript of the Cross-Examination of Jonathan William Klesch dated April 2, 2024 at pp 15:22 [“Cross Examination Transcript”].

guarantee of GPOC's loans arising from the TVE Transaction and thus allowing GPOC to obtain the loan from the Lenders.³

8. Mr. Klesch is one of two directors of each of GPOC, GPHC and GPCM (collectively, the "**Griffon Entities**").⁴ He has over 20 years of experience in commodities trading and structured finance transactions in the oil and gas sector and is the founder of Griffon Partners, an investment management partnership between various groups of people connected with Mr. Klesch including the shareholders and directors of the Griffon Entities, with an emphasis on natural resources and infrastructure.⁵ Prior to founding Griffon Partners and the Griffon Entities, Mr. Klesch spent over 20 years at the Klesch Group, which predominately owns and operates oil refineries.⁶ Mr. Klesch has extensive experience in commodities trading and structured finance transactions.

9. Mr. Klesch is also the sole beneficial owner of Spicelo, an investment company incorporated under the laws of the Republic of Cyprus and extra-provincially registered in Alberta.⁷ At all times, Mr. Klesch has acted as the directing and controlling mind of Spicelo and maintained the exclusive ability to negotiate on behalf of and direct it to enter into binding agreements.⁸

10. Spicelo's only asset is its common shares held in Greenfire Resources Ltd. (the "**Pledged Shares**"), a company of which Mr. Klesch is a director. Mr. Klesch purchased the Pledged Shares to be held by Spicelo in a previous transaction for \$250,000.00. While the Pledged Shares were issued to Spicelo, they were paid for by Mr. Klesch by transferring Julian McIntyre \$250,000.00 which was then used to purchase 15% equity on Greenfire Resources Ltd.⁹ The sole purpose of Spicelo is to hold the Pledged Shares as an investment entity for Mr. Klesch and no one else.¹⁰ Spicelo is "one and the same as GPOC" and exists in Alberta solely for the purpose of finding investment deals and act as a bank account for that purpose.¹¹

11. Ioannis Charalambides is retained by Mr. Klesch via his company of ICC Sovereign Group to act as a director and secretary of Spicelo due to his knowledge of Cypriot law and his 10-year business relationship with Mr. Klesch.¹² Mr. Charalambides offered the Pledged Shares in the Share Pledge on the instruction of Mr. Klesch and is expected to obtain approval from Mr. Klesch for any agreements on behalf of Spicelo.¹³ Mr. Charalambides would not sell any shares or assets without the input from

³ Cross Examination Transcript at pp 51:22 – 52:6.

⁴ Affidavit of Daryl Stepanic, affirmed January 29, 2024 at para 13.

⁵ Cross Examination Transcript at pp 21:10 – 22:6.

⁶ Cross Examination Transcript at 15:3 – 18:15.

⁷ Affidavit of Daryl Stepanic, sworn September 14, 2023 in BIA Proceedings, at para 11.

⁸ Cross Examination Transcript at pp 31:15 – 32:3.

⁹ Cross Examination Transcript at 31:15 – 32:5.

¹⁰ Cross Examination Transcript at 31:23 – 32:3.

¹¹ Cross Examination Transcript at pp 32:10 – 32:24.

¹² Cross Examination Transcript at pp 30:10 – 30:18.

¹³ Cross Examination Transcript at pp 35:14 – 36:4.

Mr. Klesch.¹⁴ Mr. Klesch maintains full control of Spicelo, Mr. Charalambides does not take any substantive steps without Mr. Klesch's knowledge and consent, and Spicelo was created to hold the Pledged Shares for Mr. Klesch and exists solely as his personal investment vehicle.

12. Similarly, Mr. Klesch is the sole shareholder of Stellion and is controlled by Mr. Klesch in the same way in which he owns and controls Spicelo.¹⁵ Stellion was registered in Alberta in order to file a Notice of Intent to Make a Proposal ("**NOI**") under the *Insolvency Act*. Stellion has partial ownership of GPCM which it acquired for nominal value.¹⁶ No funds were paid by the Griffon Entities to acquire the assets from TVE outside of legal costs and a Texas Reserve Report by a 3rd party.

13. Each of the Griffon Entities, Stellion and Spicelo were incorporated between April 6 and July 11, 2022, just prior to the transaction with TVE as described below.

The Asset Purchase and Sale Transaction

14. In or around July of 2022, TVE entered into negotiations with GPOC for the purchase of certain of GPOC's oil and gas assets located in Alberta and Saskatchewan (the "**TVE Transaction**").

15. Mr. Klesch was involved in the negotiation process with TVE on behalf of GPOC and Spicelo along with Elliott Choquette including negotiation of terms of the Loan Agreement (defined below).¹⁷ Further demonstrating Mr. Klesch's control and ownership over GPOC, Spicelo, and Stellion, he offered the Pledge Shares to TVE as part of the TVE Transaction to enable GPOC acquire the assets from TVE.

16. As part of the TVE Transaction, Mr. Klesch reviewed the Share Pledge, consulted legal counsel, and understood that the purpose of the Share Pledge was to offer security to the lenders. He also understood that if GPOC was in technical default that Spicelo would have been required to pay out the Pledged Shares, which was the only guarantee pledged which had asset value.¹⁸

17. As GPOC did not have nor contribute any cash or assets to complete the TVE Transaction, it required financing which it obtained from the Lenders and TVE.¹⁹

18. Despite being the entity that received the assets as a result of the TVE Transaction, GPOC had no assets and did not pay any cash for TVE's assets. The only asset of value which was pledged to support the TVE Transaction was the Pledged Shares.²⁰

¹⁴ *Ibid.*

¹⁵ Cross Examination Transcript at pp 38:23 – 39:10.

¹⁶ Cross Examination Transcript at pp 40:19 – 41:3.

¹⁷ Cross Examination Transcript at pp 42:18-21, 45:16 – 45:25; Email from Jonathan Klesch to Arun Chandrasekaran and Rahim Daredia, dated May 30, 2022, Exhibit 3 of Cross Examination Transcript.

¹⁸ Cross Examination Transcript at pp 46:16 – 48:23.

¹⁹ Stepanic January 29 Affidavit, at para 24; Affidavit of David Gallagher, sworn October 17, 2023, at para 11.

²⁰ Cross Examination Transcript at pp 57:7 – 57:21.

19. With the Lenders, GPOC entered into a Loan Agreement dated July 21, 2022, and amended as of August 31, 2022 (collectively, the “**Loan Agreement**”), whereby the Lenders agreed to advance USD\$35,869,565.21.²¹

20. Pursuant to the Loan Agreement, the Lenders are GPOC’s senior secured creditors with a security interest in all of GPOC’s present and future real and personal property.

21. As security for payment of performance of GPOC’s obligations under the Loan Agreement, Mr. Klesch offered the Pledged Shares (defined below) he beneficially owns through Spicelo.²²

22. Spicelo and the Lenders entered into the Share Pledge, pursuant to which Spicelo pledged all of the common shares it holds in Greenfire Resources Ltd. as collateral (the “**Pledged Shares**”).²³ In the recitals to the Share Pledge, the close business and financial relationship of Spicelo and GPOC is expressly acknowledged, as is the “substantial direct and indirect benefits” Spicelo will derive from the TVE Transaction.

23. Under the terms of the Share Pledge,

- (a) Spicelo, jointly and severally, irrevocably and unconditionally guarantees to the Lenders the due and punctual payment, and the due performance, of GPOC’s obligations (defined as including all debts and liabilities) under the Loan Agreement;
- (b) In the event GPOC does not duly perform any obligations under the Loan Agreement, Spicelo, as a separate and distinct obligation, will:
 - (i) Indemnify and save harmless the Lenders from and against all losses resulting from the failure of GPOC to perform its obligations;
 - (ii) perform said obligations as the primary obligor;
- (c) in the event of a default by GPOC of the Loan Agreement, *inter alia*, Spicelo will pay and perform all obligations and pay all amounts payable by GPOC to the Lenders, and the obligation to do so arises immediately after demand for such payment or performance is made in writing to it;
- (d) the Lenders may, without consent of or notice to Spicelo, exercise or enforce or refrain from exercising or enforcing any right or security against Spicelo or GPOC;
- (e) the Lenders are not obliged to exhaust their recourse against, *inter alia*, any other security it may hold before realizing upon the Pledged Shares;
- (f) Spicelo acknowledges that the Pledged Shares may be disposed of in whole or in part; and

²¹ Affidavit No. 1 of Matthieu Milandri, sworn on March 18, 2024, at para 8 and Exhibit “C”.

²² *Ibid*, at para 9 and Exhibit “D”.

²³ Stepanic January 29 Affidavit at para 41(c) and Exhibit “M”.

- (g) the Lenders are entitled to realize upon the Pledged Shares by sale, transfer, delivery or the appointment of a receiver over the Pledged Shares.²⁴

24. The TVE Transaction was also financed by TVE pursuant to a Subordinated Secured Promissory Note in the amount of \$20 million plus interest granted by GPOC in favour of TVE (the “**Promissory Note**”), pursuant to which TVE has a second priority security interest in all of GPOC’s present or after-acquired property, subordinate only to the security interests in same granted to the Lenders.²⁵

25. TVE is not a party to any share pledge agreement with Spicelo.

26. As such, TVE’s sole source of recovery of the amount owing by GPOC under the Promissory Note is from the proceeds of the SISF, as defined below.

Default by GPOC

27. At around the time the Griffon Entities entered into the TVE Transaction, they were attempting to negotiate three other transactions,²⁶ despite being heavily indebted to both the Lenders and TVE.

28. Unsurprisingly, within four months of entering into the Loan Agreement, GPOC defaulted on same.²⁷

29. GPOC and Spicelo were aware that, aside from the operation of the Viking assets obtained from TVE in the TVE Transaction, they had no means to repay the Loan Agreement or the Promissory Note and despite the 3-year repayment period, attempted to renegotiate the Promissory Note to more favourable terms almost immediately as it was “a very expensive piece of paper” which Mr. Klesch had “to get rid of as fast as we can”.²⁸

30. From in or around May of 2023 to August of 2023, GPOC and the Lenders entered into discussions regarding a potential forbearance and refinancing of the Loan Agreement. During these discussions, Mr. Klesch offered to refinance the Loan Agreement by offering various combinations of the dividend on the Greenfire Shares, the equivalent value of \$20 million dollars in Greenfire Shares to the Lenders, along with payments financed by third party lenders to satisfy the amounts owing to the Lenders.²⁹

31. No such proposals were made to TVE. Rather, Mr. Klesch stated that if the Lenders took steps to formally enforce the Loan Agreement, it “...could be a good option to eliminate the Tamarack

²⁴ *Ibid.*

²⁵ Affidavit of Daryl Stepanic, sworn on September 14, 2023, at Exhibit “N”.

²⁶ Affidavit of Daryl Stepanic, sworn January 29, 2024, at para 54.

²⁷ Affidavit of Daryl Stepanic, sworn January 29, 2024 at para 65.

²⁸ Cross Examination Transcript at pp 49:2 – 49:14.

²⁹ Affidavit of Daryl Stepanic, sworn September 14, 2023 at Exhibit “V”; Affidavit of David Gallagher, sworn September 19, 2023 at Exhibit “C” (the “Gallagher September 19 Affidavit”).

note.”³⁰ The disregard for TVE’s interests under the Promissory Note have continued in the insolvency proceedings before this Honourable Court.

32. Ultimately, the Lenders and GPOC could not come to an agreement to forbear or refinance the Loan Agreement.

33. On August 16, 2023, the Lenders enforced upon their rights under the Loan Agreement and the Share Pledge and issued Demands for Payment and Notices of Intention to Enforce Security pursuant to section 244 of *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) to GPOC, Spicelo, and all other debtors and guarantors in these proceedings (GPHC, GPCM, Stellion, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., collectively with GPOC and Spicelo, the “**Debtors**”), demanding payment for the full amount owing under the Loan Agreement by GPOC (the “**Section 244 Notice**”).

34. As noted in the Debtors’ Bench Brief in support of the Debtors’ Application, filed March 18, 2024 at para 14, on August 23, 2023, in response to the Lenders’ issuance of the Section 244 Notice to enforce the Loan Agreement and Share Pledge,³¹ the Debtors filed NOIs. Spicelo registered as an extra-provincial corporation in the Province of Alberta in order to do so. Previously, it had only been registered in the Republic of Cyprus.

The NOI and CCAA Proceedings

35. On August 25, 2023, the Debtors (including the newly-registered Spicelo) filed Notices of Intention to Make a Proposal under the BIA (the “**NOI Proceedings**”).

36. In the course of the NOI Proceedings, counsel for the Debtors stated that, operationally, they are all related entities.³² At the hearing on September 22, 2023, counsel for the Debtors stated:³³

... Jonathan Klesch is the ultimate beneficial owner of the shareholder of Stellion. Spicelo is a related company to Stellion. And the relationship between the GPOC group of companies and Spicelo is that Spicelo granted a guarantee and a share pledge in respect of the GPOC debt.

...

So these companies are all part of the same facility. Operationally, they're separate. Spicelo is not involved in the oil and gas play that GPOC is involved in. But in terms [of] this financing, they're all in the same boat. Because the GPOC companies are the borrowers and guarantors of the credit agreement and Spicelo is a guarantor of that same credit agreement.

³⁰ Gallagher September 19 Affidavit at Exhibit “C”.

³¹ Debtors’ Bench Brief in support of the Debtors’ Application, filed March 18, 2024 at para 14.

³² Affidavit of David Gallagher, sworn January 29, 2024 at Exhibit “D”, transcript from hearing on September 22, 2023 at p. 9, l 38-40.

³³ Affidavit of David Gallagher, sworn January 29, 2024 at Exhibit “D”, p. 10, l 8-13 and l 17-21.

37. Further, counsel for the Monitor, Alvarez & Marsal Canada Inc. (“A&M”), stated that, with respect to Spicelo, it is “...an important party here, and they are an insolvent entity with common ownership and common interests. They’re part of the bundle of companies”.³⁴

38. Furthermore, repeated assurances were given by Debtors’ counsel that the Lenders would be repaid in full through the NOI Proceedings, either following a successful a sale and investment solicitation process (“**SISP**”) or in the event of a liquidation of the Debtors’ assets:³⁵

... And to grant the stay extension today will allow the debtors to do a number of things. It will allow them to undertake [the] SISP that is described in our materials to pay the lenders out and the lenders will get paid out every penny they are owed. Every penny. And they will get paid out every penny they are owed before the maturity date under the credit agreement. Under the credit agreement, they wouldn't get paid out until 2025.

...

Either the SISP will be successful and they will get paid out every penny on the dollar, or the SISP isn't successful in which case this whole thing goes into liquidation and they get paid out based on their over-collateralized position. Under either scenario, they get paid out.

39. With respect to TVE, GPOC has stated in these proceedings that the Pledged Shares “...alone should be sufficient to satisfy all obligations due and owing both to the Lenders and Tamarack [TVE]...”³⁶

40. However, aside from that statement, throughout the NOI Proceedings and as continued in the within proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”), no such assurances have been made to TVE regarding repayment of any of the amount owing under the Promissory Note. Rather, as foretold by Mr. Klesch, these insolvency proceedings appear to be a “good option” to eliminate or disregard the Promissory Note.

41. On October 18, 2023, an Order was granted by this Honourable Court approving the SISP through which GPOC’s assets were to be marketed and sold.

42. The SISP was extended on several occasions without a proposal being put to the Lenders and TVE prior to the expiry of the NOI Proceedings.

43. On February 7, 2024, an Initial Order and an Amended and Restated Initial Order were granted by this Honourable Court to allow the NOI Proceedings to continue under the CCAA proceedings and

³⁴ *Ibid*, at p 81

³⁵ Affidavit of David Gallagher, sworn January 29, 2024 at Exhibit “D”, p. 20, l 27-36 and p. 21, l 1-7.

³⁶ Affidavit of Daryl Stepanic, sworn September 14, 2023, at para 71.

staying proceedings until March 6, 2024, with a view of concluding the SISP for the benefit of the Lenders and TVE (collectively, the “**Initial Orders**”).

44. On February 22, 2024, a successful bid under the SISP was selected by the Monitor, Alvarez & Marsal Canada Inc. (the “**Monitor**”).

45. In the within CCAA proceedings, a successful bidder in the SISP process has been selected and the Monitor has advised that it does not anticipate there will be sufficient funds to satisfy all of the obligations owing by GPOC to the Lenders as senior secured creditors³⁷, let alone amounts owing to TVE. As of the date of this application, the Lenders and Tamarack are collectively owed in excess of CAD\$74 million.

46. The issues of marshalling and subrogation were raised by TVE at the hearing before this Honourable Court on February 6, 2024, and leave to bring the within application prior to any sale of the Pledged Shares was expressly granted in the Initial Order.

47. A determination of whether the doctrines of marshalling and subrogation are required as the SISP reaches its conclusion, funds become available for distribution, and the total amount of the shortfall available to TVE and the Lenders becomes known.

III. ISSUES

48. The issues to be determined in this Application are:

- (a) Whether the doctrine of marshalling applies such that the Lenders must realize upon the Pledged Shares in full prior to realizing upon the proceeds from the SISP; and
- (b) Whether Spicelo is entitled to subrogate to the Lenders’ security position as against GPOC in priority to TVE, or at all.

IV. LAW AND ARGUMENT

The Doctrine of Marshalling

49. The equitable doctrine of marshalling dictates that, if a creditor has two funds to draw upon to satisfy a debt, the court will require it to take satisfaction from that fund upon which another creditor has no security.³⁸ It is a doctrine whereby equity assumes that the senior creditor “would want to act honourably, and not capriciously, by leaving as much as possible” for the junior creditor.³⁹

50. In *Condominium Corp. No. 082 6970 v. 1117398 Alberta Ltd.* (“**111 Alberta Ltd**”), this Court stated with respect to the doctrine of marshalling and the requirements for its application as follows:⁴⁰

Marshalling is a doctrine rooted in a longstanding principle of equity which essentially provides that a “senior” creditor, or a creditor with access to multiple funds to satisfy

³⁷ Second Report of the Monitor, Alvarez & Marsal Canada Inc., at para 35.

³⁸ *Gerrow v. Dorais*, 2010 ABQB 560 at para. 21 [Tab 1].

³⁹ *Veeradon Developments Ltd.* (1988), 84 AR 364, 47 D.L.R. (4th) 446 (Alta. C.A.) at para 17 [Tab 2].

⁴⁰ *Condominium Corp. No. 082 6970 v. 1117398 Alberta Ltd.*, 2012 ABQB 233 at paras 10, 11, 43 and 44 (“**111 Alberta Ltd**”) [Tab 3].

its debt, should marshal its enforcement in such a way as to cause as little harm as possible to a "junior" creditor, or a creditor with access to only one of the same funds. Equity directs that the senior creditor look first to those funds that the junior creditor does not have access to, in order to avoid needlessly wiping out the junior creditor's security.

Marshalling requires that there be more than one fund to which the senior creditor has recourse, and these funds either belong to the same debtor or relate to the same debt. [...]

Marshalling applies where the funds belong to the same debtor, or to two or more debtors with respect to the same debt.

Marshalling will not allow prejudice to another junior creditor, such as where there is a third creditor with recourse only to fund "A". Nor will marshalling allow prejudice to the senior creditor's "paramount right" to be repaid in accordance with its debt agreement. However, the fact that marshalling requires the senior creditor to look to one fund versus the other is not prejudice: its only interest is in being repaid and it is immaterial which fund it is repaid from.

51. Marshalling is an equitable doctrine without well-defined or clear limits, and is to be applied with "flexibility, adaptability and utility".⁴¹ Of note, it is a doctrine that has not received any significant treatment by the Supreme Court of Canada, and limited treatment among appellate courts across Canada.⁴²

52. Further, it has been held that it can be considered under an application brought by the singly-secured creditor. In *Brown v. Canadian Imperial Bank of Commerce*, the Ontario High Court of Justice held that:

Although the doctrine of marshalling is usually relied upon in proceedings brought by the doubly-secured creditor, I do not think it should be limited to such cases [...]. I do not think the singly-secured creditor should be required to stand by and watch his security deteriorate [...].

The doctrine of marshalling is intended to achieve fairness. In the absence of any authority to the contrary, I can see no reason why marshalling should be denied in this case simply because the proceedings were brought by the singly-secured creditor, and he paid off the doubly-secured creditor out of a practical necessity to do so, but without any legal obligation.

53. The factors to be considered when applying the doctrine of marshalling include the following:

⁴¹ *House v Baird*, 2019 ONSC 1712 (ON SCJ) at para 37 [Tab 4].

⁴² *Wolfe et al v Taylor et al*, 2020 MBCA 44 at para 34 [Tab 5].

- (a) There must be at least two creditors;⁴³
- (b) The creditors must be indebted to the same debtor, known as the "single common debtor rule",⁴⁴ subject to an exception where a surety is involved;
- (c) The debtor must have two funds and the senior creditor must hold security over both funds, while the junior creditor has security in only one;⁴⁵
- (d) The two funds must be in existence at the time of the marshalling;⁴⁶
- (e) The application of marshalling must not prejudice the senior creditor nor interfere with its choice of remedy to enforce its security;⁴⁷
- (f) The application of marshalling must not result in prejudice to third parties,⁴⁸ prejudice to unsecured third parties is irrelevant.⁴⁹

54. TVE submits that each of these factors are satisfied such that the doctrine of marshalling applies in the present circumstances, as detailed below.

Two Creditors

55. In these circumstances, this criterion is satisfied as there are two creditors: the Lenders and TVE.

Exception to the Single Common Debtor Rule

56. The default under the doctrine of marshalling is that the creditors must be indebted to the same or "single common" debtor.

57. However, this factor has been applied flexibly, and there is an exception in circumstances where the two funds available are from a principal debtor and a guarantor.⁵⁰

58. In the Debtors' Bench Brief in respect of the doctrine of marshalling, they argue that the surety exception to the single common debtor requirement applies only in circumstances where the senior and junior creditor are doubly-secured against a guarantor or surety, and where the senior creditor is also secured as against the principal debtor.

59. The Debtors allege that the opposite situation, whereby the senior and junior creditors both hold security against the principal, with the senior creditor also holding security against the surety, does not satisfy the surety exception to the single common debtor rule.

⁴³ *Ernst Brothers Co. v. Canada Permanent Mortgage Corp.*, 1920 CarswellOnt 144 (ON CA) at para 21 [*Ernst Bros*] [Tab 6].

⁴⁴ *Ernst Bros*, *Ibid* [Tab 6].

⁴⁵ *Ernst Bros*, *Ibid* at para 22 [Tab 6].

⁴⁶ *Spa Springs Parks Ltd. v. Mineral Water Co. of Canada Ltd. (Receiver of)* (1991), 111 NSR (2d) 71 (NS TD) at para 24 [Tab 7]; *Scott Steel Ltd. v. "Alarissa" (The)*, [1996] 2 FC 883 (Fed TD) at para 102; affirmed 1997 CarswellNat 179 (Fed TD) [Scott Steel] [Tab 8].

⁴⁷ *Ernst Bros*, at para. 22 [Tab 6].

⁴⁸ *Ernst Bros*, *Ibid* [Tab 6].

⁴⁹ *Wolfe* at para 38 [Tab 5].

⁵⁰ *Brown v. Canadian Imperial Bank of Commerce*, 1985 CarswellOnt 729 (Ont HC) [Tab 9].

60. However, the Debtors do not cite any authorities expressly prohibiting such situation from satisfying the single common debtor rule. For example, in the passage below from *Halbury's Laws of Canada* which was cited in the Ontario Superior Court decision in *Brown v Canadian Imperial Bank of Commerce* for the proposition that a surety exception exists to this single debtor rule, it states that:⁵¹

Generally, three conditions must be satisfied in order that the doctrine of marshalling may be applied as regards claims by creditors. First, the claims must be against a single debtor. If one creditor has a claim against C and D, and another creditor has a claim against D only, the latter creditor cannot require the former to resort to C unless the liability is such that D could throw the primary liability on C, for example where C and D are principal and surety.

[Emphasis added]

61. As stated, this is an *example* and does not assert that it must be the surety's assets that are doubly-secured. There is nothing barring this Honourable Court from finding that the surety exception to the single debtor rule can be applied where the principal is doubly-secured as opposed to only a surety.

62. In the United States, courts have applied an exception to the single common debtor requirement where the singly-charged funds are in the hands of the surety where: 1) the corporation is an alter ego of the corporate guarantor and the court "pierces the corporate veil"; (2) the guarantor shareholder has committed fraud or other inequitable conduct; and (3) where the pledged asset is found to be a contribution to the capital of the corporation.⁵²

63. As outlined in greater detail below, Mr. Klesch engaged in fraudulent and inequitable conduct by, among other things, causing GPOC to enter into the Promissory Note with no intention of repaying TVE, and by, at times disregarding, and other times effectively seeking to discharge, TVE's security interest in GPOC's assets in the course of his negotiations with the Lenders to refinance and renegotiate the Loan Agreement. As stated by Mr. Klesch during his cross examination, TVE's security interest in GPOC's assets constituted an "expensive piece of paper" given its interest rate which he was looking to renegotiate as soon as possible in order to maximize his recovery from GPOC.⁵³ Mr. Klesch's interest in maximizing his personal recovery arising from the default of GPOC on the Loan Agreement is also why the Pledged Shares were not part of the SISP process as Mr. Klesch felt that the shares were currently undervalued and should not be sold at this time.⁵⁴

⁵¹ Halbury's Laws of Canada vol 16, 4th ed., p. 962, para. 1426 [Tab 10].

⁵² In re Field, 226 B.R. 178, 183 (Bankr. D. S.C. 1998) (quoting Borges, 184 B.R. at 879, n.3) [Tab 11]; Fundex Capital Corp. v. Balaber-Strauss (In re Tampa Chain Co. [Tab 12]), 53 B.R. 772, 778-79 (Bankr. S.D.N.Y. 1985)

⁵³ Cross Examination Transcript at pp 49:11.

⁵⁴ Cross Examination Transcript at pp 66:11 – 66:18.

64. Mr. Klesch also made a necessary capital contribution to GPOC in the TVE Transaction by pledging his Pledged Shares. The Share Pledge was necessary in order for GPOC to obtain the financing required under the Loan Agreement for the purchase of TVE's assets.⁵⁵ As a condition precedent to the Loan Agreement, the Credit Parties (which include Spicelo) were to provide signed copies of the requisite Security Documents to provide a first ranking priority interest in the Collateral (i.e. the Pledged Shares) in favour of the Lenders.⁵⁶ Provision of the Pledged Shares by Mr. Klesch as a capital contribution was necessary in order for the TVE Transaction to go ahead, which is why Mr. Klesch offered the Pledged Shares to TVE and why TVE required them to move ahead with the transaction.⁵⁷

65. Further, in their Bench Brief the Debtors completely ignore the overarching equitable principles of marshalling.

66. Specifically, the case law consistently states that the doctrine of marshalling must be applied with "flexibility, adaptability and utility" with a view of ensuring that a junior or subordinate creditor's security is not needlessly wiped away.

67. In keeping with these principles, it is just and equitable in the circumstances for the Lenders to first enforce upon the Pledged Shares thus allowing TVE as a junior creditor to recoup some of its losses from GPOC.

68. Further, in the present circumstances it would not be illusory or pointless for this Honourable Court to direct that the Lenders enforce upon the Share Pledge prior to realizing upon any of the proceeds from the SISP because, as detailed below, Spicelo's right of subrogation was expressly waived under the Share Pledge and is not available to it in equity.

69. Consistent with the purpose of the equitable doctrine of marshalling, and recognizing that there is no bar to applying the surety exception where the senior and junior creditors are secured against the primary debtor, TVE submits that the surety exception to the single debtor requirement applies, especially when considering that the Debtors, by their own counsel's admission, are related for the purpose of financing the TVE Transaction and that Mr. Klesch is a director and shareholder of both GPOC and Spicelo with Mr. Klesch owning 100% of Spicelo and 79.5% of the class B shares of GPOC via Stellion. Further, Mr. Klesch stated during his cross examination that Spicelo and Stellion were set up purely as investment vehicles to allow him to hold assets and raise capital in Alberta to fund the transaction. Given Mr. Klesch's control of GPOC, Spicelo, and Stellion and that he is the owner of the Pledged Shares and the majority of the Class B shares in GPOC, there is effectively only one debtor.

⁵⁵ Affidavit of Daryl Stepanic, sworn September 14, 2023, at Exhibit "H" at Article 3.

⁵⁶ *Ibid*, at Section 4.1.

⁵⁷ Cross Examination Transcript at pp 52:21 – 54:6.

Funds Available to Senior and Junior Secured Creditors

70. In the present matter, the Lenders have access to both the Pledged Shares and the proceeds from the sale of GPOC's assets under the SISP, whereas TVE only has access to the latter. TVE does not have recourse against any of the other Debtors for the amounts owing under the Promissory Note. As such, this requirement under the doctrine of marshalling is satisfied.

The Funds Must Be In Existence

71. The funds against which the Loan Agreement and the Promissory Note will be enforced are or will be in existence imminently upon the closing of the asset sale transaction under the SISP. With respect to the Share Pledge, as per an Order of this Honourable Court pronounced on December 15, 2023 in the NOI Proceedings, the Lenders may exercise their rights under the Share Pledge (which would include enforcing upon the Pledged Shares) in the context of the ongoing NOI Proceedings which have since been continued herein under the CCAA.

No Prejudice to the Lenders

72. There is no prejudice to the Lenders through the application of the doctrine of marshalling. TVE understands that the Lenders are supportive of this application and that it is their preference to enforce upon the Share Pledge and recover the Pledged Shares rather than await the distribution of proceeds from the SISP, which will not be sufficient to satisfy the full amount owing to the Lenders by GPOC.

No Prejudice to Third Parties

73. In this case, TVE submits there is no prejudice to Mr. Klesch as a beneficial shareholder of Spicelo. First, he is just that – a beneficial shareholder – who has limited to no interests when it comes to repaying creditors, let alone secured creditors.

74. Mr. Klesch is an experienced, sophisticated businessman. He was involved in the negotiation of the terms of the Loan Agreement on behalf of GPOC, and the Share Pledge on behalf of Spicelo, acknowledged under cross examination that he was the most active partner in the Griffon Partners activities, and had effective control over Spicelo and GPOC.⁵⁸

75. The terms of the Share Pledge expressly allow for the Lenders to enforce upon the collateral, namely the Pledged Shares, in the event of GPOC's default under the Loan Agreement.

76. The fact that the Lenders, through the doctrine of marshalling, are simply enforcing upon the negotiated terms of the Share Pledge cannot now be viewed as prejudicial to Mr. Klesch.

77. Further, to allow Mr. Klesch to avoid the application of the doctrine of marshalling would be prejudicial to TVE.

⁵⁸ Cross Examination Transcript at pp 22:4-22:6, 35:14 – 36:4.

78. The doctrine of marshalling is meant to be applied flexibly and contextually, and to avoid circumstances where a junior creditor's security is "needlessly wip[ed] out".⁵⁹

79. TVE submits that the only parties facing true prejudice are TVE and GPOC's other creditors, and that preference should not be given to preserving Mr. Klesch's ownership of the Pledged Shares, especially given the non-arm's length relationships involved with the Debtors and Mr. Klesch as a director of GPOC.

Subrogation

80. Spicelo asserts that it has a right of subrogation that negates the doctrine of marshalling.

81. However, TVE submits that Spicelo expressly waived its right to subrogation under the terms of the Share Pledge negotiated by Mr. Klesch, and that in any event it is not entitled to rely on this doctrine on account of its non-arm's length dealings and fraud.

Waiver of Right of Subrogation

82. The transaction contemplated by the successful bidder under the SISP is a reverse vesting order whereby the bidder will acquire all the shares of GPOC, assume control or possession over desired regulatory licences or permits, contracts, assets, other rights and property, and dispose of those assets causing GPOC's insolvency.⁶⁰

83. Under this scenario, there would be a transfer in the entire equity of GPOC to the successful bidder.

84. However, under the terms of the Share Pledge negotiated by Mr. Klesch on behalf of Spicelo, if there is a sale, foreclosure or disposition of any of the equity securities of GPOC in connection with the exercise of the Lenders' rights and remedies under the Loan Agreement, the right of subrogation terminates. The relevant clause of the Share Pledge reads as follows:

Section 11 Suspension of Chargor's Rights.

So long as there are any Guaranteed Obligations, the Chargor will not exercise any rights which they may at any time have by reason of the performance of any of their obligations under this Agreement (i) to be indemnified by the other Credit Parties, or any of them, (ii) to claim contribution from any other guarantor of the debts, liabilities or obligations of the other Credit Parties, or any of them, or (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Collateral Agent or the Secured Parties under any of the Credit Documents. The Chargor hereby agrees in favour of the Borrower and the other Credit Parties, that any such rights of indemnification, contribution, or subrogation terminate in the event of a

⁵⁹ 111 Alberta Ltd., *supra* note 40 at para 10 [Tab 3].

⁶⁰ Monitor's Second Report, at para 23.

sale, foreclosure or other disposition of any of the equity securities of the Borrower or any other Credit Party in connection with an exercise of rights and remedies by the Collateral Agent and the Secured Parties. The Chargor further agrees that the Borrower, the other Credit Parties and other guarantors of the debts, liabilities and obligations of the Borrower are intended third party beneficiaries of the Chargor's agreement contained in this Section 11.

[Emphasis added]

85. In the present matter, the Lenders issued Section 244 Notices to the Debtors (including GPOC and Spicelo), which precipitated their commencement of the NOI Proceedings which have been continued in the within CCAA proceedings.⁶¹ The Lenders have also been active in the NOI Proceedings and CCAA proceedings in exercising and enforcing their rights under the Loan Agreement and Share Pledge, including by bringing several applications to appoint a receiver over the Pledged Shares.

86. To repay the amounts owing to, *inter alia*, the Lenders under the Loan Agreement, GPOC engaged in the SISP, with the successful bidder structuring their bid in the form of a reverse vesting order which will require the sale or disposition of GPOC's equity to said bidder (the "RVO").⁶² The successful bidder has yet to execute a share purchase and sale agreement.⁶³

87. Although subrogation is an equitable remedy, it can be waived by agreement.⁶⁴ In *E C & M Electric Ltd. v. Medicine Hat General & Auxiliary Hospital & Nursing Home*, this Honourable Court cited the following passage from Halsbury's Laws of England on point:⁶⁵

193. Surety's right of subrogation. As soon as the surety has paid to the creditor what is due to the creditor under the guarantee, he is entitled, unless he has waived them, to be subrogated to all the rights possessed by the creditor in respect of the debt, default or miscarriages to which the guarantee relates.

[Emphasis added]

88. As there will be a sale of the equity of GPOC through an RVO to a successful bidder, under the terms of the Share Pledge Spicelo expressly waived its right of subrogation. Therefore, Spicelo should be precluded from advancing any subrogated claim against the proceeds of the SISP in priority to TVE, or at all.

⁶¹ Debtors' Bench Brief, at para 14.

⁶² Monitor's Second Report, at para 23.

⁶³ *Ibid*, at para 22.

⁶⁴ *Fraser River Pile and Dredge Ltd v Can-Dive Services Ltd.*, [1999] 3 SCR 108 (SCC) [Tab 13].

⁶⁵ 1987 CarswellAlta 25 (AB KB) at para 19 [Tab 14].

Subrogation and Equity

89. Further, or in the alternative, TVE submits that Spicelo is not entitled to bring a subrogated claim on the bases that Spicelo, through its beneficial shareholder and principal Mr. Klesch, engaged in fraudulent, bad-faith conduct.

90. Subrogation is an equitable doctrine whereby if a guarantor pays a creditor on behalf of a principal, the guarantor is allowed to step into the position of the creditor and bring a subrogated claim against the principal. It has been defined by Halsbury's Laws of Canada as follows:

193. Surety's right of subrogation. As soon as the surety has paid to the creditor what is due to the creditor under the guarantee, he is entitled, unless he has waived them, to be subrogated to all the rights possessed by the creditor in respect of the debt, default or miscarriages to which the guarantee relates.⁶⁶

1438. Doctrine of subrogation. Where one person has a claim against another, in certain circumstances, a third person is allowed to have the benefit of the claim and the remedy for enforcing it, even though it has not been assigned to him, and he is then said to be subrogated to the rights of the first person.⁶⁷

91. The doctrine of subrogation came into existence for the express purpose of rendering justice where an injustice would otherwise be permitted.⁶⁸ However, Canadian courts have been clear that, under the doctrine of subrogation, all of the circumstances must be balanced, and the Court must be satisfied that no injustice will be done through the substitution of one party in the place of another via a subrogation arrangement.⁶⁹

92. Given the non-arm's length relationship between Spicelo and GPOC, as well as the bad faith dealings of Mr. Klesch, TVE submits that allowing Spicelo (and namely Mr. Klesch as its sole beneficial owner and directing mind) to step into the senior secured position of the Lenders would inequitably place the interests of Mr. Klesch, a shareholder, above those of TVE, a secured creditor.

93. Specifically, allowing for the conveyance of the Lenders' senior secured position to Spicelo and to allow it to bring a subrogated claim in priority to TVE would offend the *Statute of Elizabeth* as well as the *Fraudulent Preferences Act* (the "FPA").⁷⁰

94. In this Honourable Court's decision in *Krumm v. McKay* ("Krumm"),⁷¹ Romaine J. provided a concise overview of the application of the *Statute of Elizabeth* in Alberta, noting that the purpose of this statute, and of the *FPA*, is to strike down any conveyances made with the intention to defeat

⁶⁶ 20 Hals. (4th ed.) 104, para. 193 [Tab 10].

⁶⁷ 16 Hals. (4th ed.) 969, para 1438 [Tab 10].

⁶⁸ *Canadian Western Bank v 1364994 Alberta Ltd*, 2021 ABQB 868 at para 87 ("CWB") [Tab 15].

⁶⁹ See: *Gerrow v Dorais*, 2010 ABQB 560 [Tab 16]; and *Alberta (Treasury Branches) v Alberta (Public Trustee)*, 2002 ABQB 781 at para 50 [Tab 17].

⁷⁰ *Fraudulent Preferences Act*, RSA 2000, c F-24("FPA") [Tab 18].

⁷¹ *Krumm v. McKay*, 2003 ABQB 437 ("Krum") [Tab 19].

creditors, except for conveyances made for good consideration and *bona fides* to persons not having notice of fraud.⁷²

95. Romaine J. further noted that the legislation must be interpreted liberally and includes any kind of transfers or conveyances made with the requisite intent no matter what the form.⁷³

96. Under the *Statute of Elizabeth*, a transfer made for nominal or no consideration is voidable if the debtor intended fraud.⁷⁴ While the *Statute of Elizabeth* includes an exception for *bona fides* transfers for consideration, it is restricted to transferees who do not have knowledge of fraud, which is not the case with Mr. Klesch.⁷⁵

97. This Court in *Krumm* noted there are “badges of fraud” that raise a *prima facie* case of a party’s intent to defraud. These badges of fraud include transfers that were made pending the creditors’ efforts to obtain judgment, instances where a close relationship existed between the parties to the transfers, and where consideration was grossly inadequate, all of which are applicable in the present circumstances given that Mr. Klesch is owns Spicelo and GPOC,⁷⁶ and that Stellion (which was registered by Mr. Klesch in Alberta for the purpose of filing an NOI and making a proposal under the *BIA*⁷⁷) acquired a 25% stake in GPOC for nominal value.⁷⁸

98. Romaine J. further found that the most persuasive factor leading to a finding of fraud was the relationship between the debtor and the transferee. She applied the evidentiary rule governing cases of close relationships between a transferor and a transferee set out in *Koop v. Smith*,⁷⁹ which was that a suspicious circumstance coupled with a relationship will generally be treated as a sufficient *prima facie* case of an intent to defraud.⁸⁰ Mr. Klesch admitted that he mostly owns both the debtor GPOC and fully owns the transferee Spicelo, and that he was looking to maximize his recovery in the circumstances and get out of the Promissory Note given that it was an “expensive piece of paper”.

99. The types of close relationships covered by this rule include transactions between individuals and corporations that they control.⁸¹ Badges of fraud, and the rebuttable presumptions that arise from them, apply not only where no consideration has been exchanged, but also to situations where there has been a transfer for value.⁸²

⁷² *Ibid* at para 13 [Tab 19].

⁷³ *Ibid* citing C.R.B. Dunlop, in *Creditor-Debtor Law in Canada* (2d Ed.) (Toronto: Carswell, 1995), at page 598 (“Dunlop”) [Tab 19].

⁷⁴ *Ibid* at Dunlop at 600, 601 [Tab 19].

⁷⁵ *Krum* *supra* note 71 at para 15 [Tab 19].

⁷⁶ Cross Examination Transcript at pp 39:1.

⁷⁷ Cross Examination Transcript at pp 40:8 – 40:11.

⁷⁸ Cross Examination Transcript at pp 49:15 – 50:8.

⁷⁹ *Koop v. Smith* (1915), 1915 CanLII 26 (SCC), 8 W.W.R. 1203 (S.C. C.) (“Koop”) [Tab 20].

⁸⁰ *Koop* at 1205 [Tab 20].

⁸¹ *Burton v. R & M Insurance Ltd.* (1977), 1977 CanLII 626 (AB KB), 5 Alta. L.R. (2d) 14, 9 A.R. 589 (T.D.) [Tab 21]; *Surkan (Trustee of) v. Niton Junction Holdings Ltd.*, [1979] 3 A.C.W.S. 570, 32 C.B.R. (N.S.) 141 (Alta. Q.B.) [Tab 22].

⁸² *Krum* *supra* note 71 at para 21 [Tab 19].

100. The presumption created by a transfer involving a close relationship is an evidentiary rule, given the difficulty of a court "engaging in [a] metaphysical excursion into the debtor's state of mind" it is not unreasonable to shift the burden of adducing evidence to rebut a *prima facie* case to the debtor in circumstances where strong suspicions of a relationship that may give rise to collusion are apparent.⁸³ An intent to defraud may be inferred from all the circumstances surrounding a transaction.⁸⁴

101. Various authorities have also held that, where the debtor receives some benefit, either direct or indirect, the *Statute of Elizabeth* may be applied to set aside a conveyance.⁸⁵ In order to invoke the protection of the *Statute of Elizabeth* a fraudulent transaction must be established. To do so, an intention to defraud must be proven. In this respect, the Court may look to the badges of fraud to determine if the necessary intent existed.⁸⁶

102. In cases where there are suspicious circumstances surrounding a conveyance a legitimate explanation may be required in circumstances of suspicion.⁸⁷ The existence of one or more of the traditional 'badges of fraud' may give rise to an inference of intent to defraud in the absence of an explanation from the defendant.⁸⁸

103. In the present matter, Spicelo and the Griffon Entities are related and not at arm's length as admitted by Mr. Klesch under cross examination and elsewhere on this Court's record. Mr. Klesch further admitted under cross examination that he owns most 79.5% of, and had substantial control over, the Debtor GPOC and fully owns the transferee Spicelo. As such, Mr. Klesch is not an arm's length person to either GPOC or Spicelo as anticipated under the *BIA*.

104. Further, the CCAA adopts section 4 of the *BIA* for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company. Under the *BIA*, two entities are deemed to be related if they are both controlled by the same person or group of persons. Further, if a person has an ownership interest in two entities, that person as holder of those ownership interests, is deemed to be related to themselves. Finally, section 4(5) of the *BIA* provides that, for the purposes of establishing whether persons are dealing at arm's length in a transfer at undervalue, persons who are

⁸³ *Ibid* at para 22 [Tab 19].

⁸⁴ *Rogers Realty Ltd. v. Prysiazny* (1996), 1996 CanLII 19959 (AB KB), 182 A.R. 118, 61 A.C.W.S. (3d) 862 (QB) at para. 18 [Tab 23].

⁸⁵ *Canada Life Assurance Co. v. 494708 Alberta Ltd.*, 1995 CanLII 9149 (AB KB), [1996] 1 W.W.R. 21, 173 A.R. 172 (QB) (at para 76) [Tab 24]; *Andersen Lumber Co. v. Canadian Conifer Ltd.* (1977), 1977 CanLII 1665 (AB CA), 25 C.B.R. (NS) 35, [1977] 5 W.W.R. 41 (Alta C.A.), at pp. 42-43 [Tab 25]; *Krumm*, at para 32 [Tab 19]; *Optical Recording Laboratories Inc. v. Digital Recording Corp.* (1990), 1990 CanLII 6672 (ON CA), 1 O.R. (3d) 131, 75 D.L.R. (4th) 747 (C.A.) [Tab 26].

⁸⁶ *Nuove Ceramiche Ricchetti S.p.A. v. Mastrogiovanni* (1988), 76 C.B.R. (N.S.) 310 (Ont. H.C.J.) [Tab 27].

⁸⁷ *Bank of Montreal v. Peninsula Broilers Ltd.*, [2009] O.J. No. 2129 (Ont. Sup. Ct.J.) where Quinn J., stated at paras. 82 and 93 [Tab 28].

⁸⁸ *Fancy, Re*, 1984 CarswellOnt 137, 25 A.C.W.S. (2d) 322, 46 O.R. (2d) 153, 51 C.B.R. (N.S.) 29, 8 D.L.R. (4th) 418 [Tab 29].

related to each other are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length.

105. Regarding the term "arm's length", it is not defined in the CCAA or the BIA. Courts in Alberta have adopted the definition set forth in the *Income Tax Act* (the "*ITA*")⁸⁹ when interpreting the BIA provisions, as the *ITA* definition of "non-arm's length" and the BIA definition of "related persons" are similar.

106. In *Piikani Nation v. Piikani Energy Corp.*⁹⁰, the Alberta Court of Appeal considered *Canada v McLarty* ("*McLarty*").⁹¹ In *McLarty*, Rothstein J discussed the term "not dealing at arm's length" in section 69 of the *ITA*. Justice Rothstein stated that the general concern in non-arm's length transactions is that "there is no assurance that the transaction 'will reflect ordinary commercial dealing between parties acting in their separate interests'".⁹² Thus, the *ITA* provisions dealing with non-arm's length parties are "intended to preclude artificial transactions from conferring tax benefits on one or more of the parties".⁹³ Justice Rothstein also cited from the Canada Revenue Agency Income Tax Interpretation Bulletin IT-419R2 "Meaning of Arm's Length" (June 8, 2004) for criteria generally used by the courts in determining whether parties to a transaction are not dealing at "arm's length":

- was there a common mind which directs the bargaining for both parties to a transaction;
- were the parties to a transaction acting in concert without separate interests;
- and
- was there "*de facto*" control.

107. In the present matter, by their own admission, the Debtors are all related. Mr. Klesch is the sole beneficial shareholder of Spicelo and its controlling and directing mind. He is also a beneficial shareholder, director and controlling mind of GPOC.

108. When the Share Pledge was granted, Mr. Klesch was aware of the subrogation rights it possessed as against GPOC, and did not disclose that to TVE in the course of negotiating and finalizing the TVE Transaction.

109. He also had no intention of repaying TVE on its Promissory Note. After GPOC's near-immediate default under the Loan Agreement and Promissory Note, Mr. Klesch's primary focus was negotiating a forbearance and refinancing of the Loan Agreement. He did not engage in meaningful negotiations with TVE on repayment of the Promissory Note. Rather, he saw an opportunity, through

⁸⁹ *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) [Tab 30].

⁹⁰ *Piikani Nation v. Piikani Energy Corp.* 2013 ABCA 293 [Tab 31].

⁹¹ 2008 SCC 26 [Tab 32].

⁹² *Ibid* at para 43 citing *Swiss Bank Corp. v. Minister of National Revenue* (1972), [1974] S.C.R. 1144 (S.C.C.), at 1152 [Tab 33].

⁹³ *Ibid* at para 43 [Tab 33].

these NOI and CCAA proceedings, stating that it was a good option to eliminate the Promissory Note with TVE, which he considered an expensive piece of paper.

110. Mr. Klesch structured the TVE Transaction in such a manner that would ensure that upon the inevitable default of GPOC on the Loan Agreement and Promissory Note, his interests would be protected to the prejudice of TVE.

111. In these circumstances, Mr. Klesch is attempting to use subrogation as a sword to benefit himself, not remedy a hardship. There should not be a conveyance of the Lenders' senior secured position to Spicelo to allow it to advance a subrogated claim against GPOC. There are sufficient badges or indices of fraud that should preclude Mr. Klesch to benefit from the equitable doctrine of subrogation. These badges of fraud include:

- (a) Mr. Klesch's control and ownership of Spicelo, Stellion, and in GPOC;
- (b) Spicelo offering the Pledged Shares to enable GPOC to transact in the market, including entering into the Loan Agreement without receiving anything in return;
- (c) Mr. Klesch providing the \$250,000.00 in funds for the Pledged Shares to be purchased by Spicelo;
- (d) Mr. Klesch entering into the Share Pledge with subrogation rights allowing him to recover from GPOC in advance of his creditor TVE effectively removing any security TVE had bargained for in the TVE transaction;
- (e) Mr. Klesch's acknowledgment that as the founder of Griffon Partners he was the most active participant in it;
- (f) Mr. Klesch's testimony under cross examination that the Promissory Note constituted an "expensive piece of paper" which he was looking to "get rid of it as fast as we can"; and
- (g) Mr. Klesch incorporated Spicelo in Cyprus via a bare trust and admitted that he was still the controlling mind of Spicelo and needed to be consulted on any and all substantive decisions despite the involvement of Mr. Charalambides.

The Doctrine of Equitable Subordination

112. Equitable subordination is a doctrine originating in the United States that allows a court "to subordinate otherwise valid claims to those of other creditors on equitable ground relating to the conduct of those creditors *inter se*".⁹⁴ The Supreme Court of Canada described the three requirements for relief under the doctrine as follows:

- (1) the claimant must have engaged in some type of inequitable conduct;

⁹⁴ *Canada Deposit Insurance Corp. v Canadian Commercial Bank*, 1992 CanLII 49 (SCC), [1992] 3 S.C.R. 558 at p. 609 ("CBB") [Tab 34].

(2) the misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant; and

(3) equitable subordination of the claim must not be inconsistent with the provisions of the bankruptcy statute.

113. Although the application of this doctrine has been inconsistent,⁹⁵ it has not been held by the Supreme Court of Canada to be of no force and effect in this country.⁹⁶ Further, there are instances where it has been applied to subordinate a creditor's claim where there is evidence of fraud.⁹⁷

114. When considering the first factor, inequitable conduct, Courts have looked at whether a creditor committed or engaged in fraud.⁹⁸

115. In this case, as outlined below, Mr. Klesch engaged in fraudulent conduct throughout his involvement in the negotiation of the Loan Agreement and Share Pledge, through which he positioned his interests to be protected in priority to TVE's when GPOC inevitably defaulted. Mr. Klesch never intended for TVE to be repaid on the Promissory Note, and this Court should exercise its inherent jurisdiction to avoid allowing Mr. Klesch to benefit from his fraud.

116. That Mr. Klesch was attempting to gain an interest in or potentially repurchase the assets sold in the TVE Transaction for a significant discount exemplifies his fraudulent, bad faith conduct. TVE submits that this Court should exercise its discretion under section 18.6(1) of the CCAA and not permit Mr. Klesch, through Spicelo, to subrogate against the GPOC estate to the prejudice of TVE.

117. When asked under oath whether he was directly involved in negotiations with bidders in the SISP process, Mr. Klesch stated that it was in his best interest to maximize the value of his recovery from GPOC.⁹⁹ While Mr. Klesch denied being involved in negotiations, talking with, or offering financing to bidders in the SISP process he admitted that he had intended to bid on the GPOC asset at a certain stage but decided against it.¹⁰⁰

118. Regarding the second factor, misconduct resulting in injury to creditors or an unfair advantage to the claimant, it is clear that Mr. Klesch's misconduct will injure TVE and cause himself and Spicelo to gain an unfair advantage. TVE is at risk of not recovering any of the over \$23 million secured debt owed to it, while Mr. Klesch potentially stands to forfeit only a portion of the Pledged Shares to satisfy debts in excess of \$73 million arising from the TVE Transaction he orchestrated. A shareholder's interests should not trump those of a secured creditor.

⁹⁵ *Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590, at para 89 [Tab 35].

⁹⁶ *CBB*, *supra* note 94 at para 96 [Tab 34].

⁹⁷ *Lloyd's Non-Marine Underwriters v JJ Lacey Insurance Ltd*, 2009 NLTD 148 ("Lloyd's") [Tab 36].

⁹⁸ *Lloyd's*, *supra* note 97 at para 16; *Re Pine Valley Mining Corp*, 2007 BCSC 926, at para 42 [Tab 36].

⁹⁹ Cross Examination Transcript at pp 62:8 – 62: 17.

¹⁰⁰ Cross Examination Transcript at pp 62:18 – 63: 3.

119. Finally, in considering whether applying the doctrine of equitable subordination would be inconsistent with the CCAA, in *Lloyd's Non-Marine Underwriters v JJ Lacey Insurance Ltd.* the Supreme Court of Newfoundland and Labrador Trial Division noted that, by subordinating the fraudulent unsecured creditor to the claims of all other unsecured creditors, it would not be bringing the distribution scheme under the *BIA* into "chaos". Rather, it would only affect the rights of the unsecured creditors relative to each other. In the present matter, the Lenders and TVE are the primary secured creditors whose priority follows only those with Court-ordered or statutory super-priorities. By subordinating Spicelo's potential subrogated claim to the TVE's secured claim, it would not otherwise disrupt or offend the distribution scheme in this CCAA proceeding as Spicelo is attempting to transform itself into a secured creditor.

120. TVE therefore submits that in the event Mr. Klesch is found to have a subrogated claim through his investment company, Spicelo, any such claim should be equitably subordinated to TVE's secured claim for amounts owing under the Promissory Note it negotiated with Mr. Klesch in good faith, to its detriment.

V. CONCLUSION

121. TVE submits that the doctrine of marshalling applies, and that as such the Lenders must enforce against the Share Pledge negotiated and granted by Spicelo in satisfaction of the debt owed by GPOC prior to recovering any of the proceeds available under the SISP.

122. TVE further submits that Spicelo, by virtue of the terms of the Share Pledge it negotiated and by reason of equity, should not be entitled to advance any subrogated claim against the SISP proceeds. In the event Spicelo is entitled to bring a subrogated claim, equity demands it should be subordinated to TVE's secured claim.

123. The relief sought would maximize the recovery of the amounts owed by GPOC to the Lenders, TVE and GPOC's other creditors, enforce the terms of agreements negotiated by sophisticated parties, and would ensure the most equitable outcome for all relevant stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 3rd day of April, 2024.

STIKEMAN ELLIOTT LLP

Per:



Matti Lemmens

Counsel to Tamarack Valley Energy Ltd.

VI. TABLE OF AUTHORITIES

TAB	AUTHORITY
1.	<i>Gerrow v Dorais</i> , 2010 ABQB 560
2.	<i>First Investors Corp. v Veeradon Developments Ltd.</i> (1988), 84 AR 364, 47 D.L.R. (4th) 446 (Alta. C.A.)
3.	<i>Condominium Corp. No. 082 6970 v 1117398 Alberta Ltd.</i> , 2012 ABQB 233
4.	<i>House v Baird</i> , 2019 ONSC 1712 (ON SCJ)
5.	<i>Wolfe et al v Taylor et al</i> , 2020 MBCA 44
6.	<i>Ernst Brothers Co. v Canada Permanent Mortgage Corp.</i> , 1920 CarswellOnt 144 (ON CA)
7.	<i>Spa Springs Parks Ltd. v Mineral Water Co. of Canada Ltd. (Receiver of)</i> (1991), 111 NSR (2d) 71 (NS TD)
8.	<i>Scott Steel Ltd. v "Alarissa" (The)</i> , [1996] 2 FC 883 (Fed TD)
9.	<i>Brown v Canadian Imperial Bank of Commerce</i> , 1985 CarswellOnt 729 (Ont HC).
10.	Halbury's Laws of Canada, Volume 16, 4th edition.
11.	<i>In re Field</i> , 226 B.R. 178, 183 (Bankr. D. S.C. 1998) (quoting <i>Borges</i> , 184 B.R. at 879, n. 3)
12.	<i>In re Tampa Chain Co.</i> , 53 B.R. 772
13.	<i>Fraser River Pile and Dredge Ltd v Can-Dive Services Ltd.</i> , [1999] 3 SCR 108 (SCC).
14.	<i>E C & M Electric Ltd. v Medicine Hat General & Auxiliary Hospital & Nursing Home</i> , 1987 CarswellAlta 25 (ABKB)
15.	<i>Canadian Western Bank v 1364994 Alberta Ltd</i> , 2021 ABQB 868
16.	<i>Gerrow v Dorais</i> , 2010 ABQB 560
17.	<i>Alberta (Treasury Branches) v Alberta (Public Trustee)</i> , 2002 ABQB 781
18.	<i>Fraudulent Preferences Act</i> , RSA 2000, c F-24
19.	<i>Krumm v McKay</i> , 2003 ABQB 437
20.	<i>Koop v Smith</i> (1915), 1915 CanLII 26 (SCC), 8 W.W.R. 1203 (SCC)
21.	<i>Burton v R & M Insurance Ltd.</i> (1977), 1977 CanLII 626 (AB KB), 5 Alta. L.R. (2d) 14, 9 A.R. 589 (T.D.)
22.	<i>Surkan (Trustee of) v Niton Junction Holdings Ltd.</i> , [1979] 3 A.C.W.S. 570, 32 C.B.R. (N.S.) 141 (Alta. QB.)
23.	<i>Rogers Realty Ltd. v Prysiaczny</i> (1996), 1996 CanLII 19959 (AB KB), 182 A.R. 118, 61 A.C.W.S. (3d) 862 (QB)
24.	<i>Canada Life Assurance Co. v 494708 Alberta Ltd.</i> , 1995 CanLII 9149 (AB KB), [1996] 1 W.W.R. 21, 173 A.R. 172 (QB)

25. *Andersen Lumber Co. v Canadian Conifer Ltd.* (1977), 1977 CanLII 1665 (AB CA), 25 C.B.R. (NS) 35, [1977] 5 W.W.R. 41 (Alta C.A.)
26. *Optical Recording Laboratories Inc. v Digital Recording Corp.* (1990), 1990 CanLII 6672 (ON CA), 1 O.R. (3d) 131, 75 D.L.R. (4th) 747 (C.A.)
27. *Nuove Ceramiche Ricchetti S.p.A. v Mastrogiovanni* (1988), 76 C.B.R. (N.S.) 310 (Ont. H.C.J.)
28. *Bank of Montreal v Peninsula Broilers Ltd.*, [2009] O.J. No. 2129 (Ont. Sup. Ct.J.)
29. *Fancy, Re*, 1984 CarswellOnt 137, 25 A.C.W.S. (2d) 322, 46 O.R. (2d) 153, 51 C.B.R. (N.S.) 29, 8 D.L.R. (4th) 418
30. *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)
31. *Piikani Nation v Piikani Energy Corp.*, 2013 ABCA 293
32. *Canada v McLarty*, 2008 SCC 26
33. *Swiss Bank Corp. v Minister of National Revenue* (1972), [1974] S.C.R. 1144 (S.C.C.), at 1152
34. *Canada Deposit Insurance Corp. v Canadian Commercial Bank*, 1992 CanLII 49 (SCC), [1992] 3 S.C.R. 558
35. *Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590
36. *Lloyd's Non-Marine Underwriters v JJ Lacey Insurance Ltd*, 2009 NLTD 148

This is **Exhibit "E"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, reading "Alyssa Roy", is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

CERTIFIED COURT FILE NUMBER
by the Court Clerk as a true copy of
the document digitally filed on May
16, 2024

JUDICIAL CENTRE

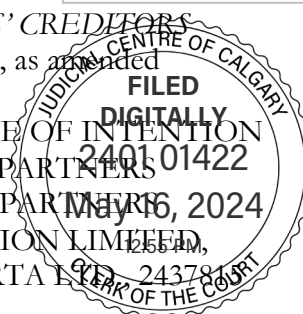
2401-01422

COURT OF KING'S BENCH OF ALBERTA

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF GRIFFON PARTNERS
HOLDING CORPORATION, GRIFFON PARTNERS
CAPITAL MANAGEMENT LTD., STELLION LIMITED,
2437801 ALBERTA LTD., 2437799 ALBERTA LTD.,
ALBERTA LTD. and SPICELO LIMITED



APPLICANT

ALVAREZ & MARSAL CANADA INC.,
IN ITS CAPACITY AS MONITOR

DOCUMENT

ORDER

**(Stay Extension, CCAA Termination, Approval of Monitor's
Actions, Activities and Fees)**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

TORYS LLP

4600 Eighth Avenue Place East

525 - Eighth Ave SW

Calgary, AB T2P 1G1

Attention: Kyle Kashuba

Telephone: +1 403.776.3744

Fax: +1 403.776.3800

Email: kkashuba@torys.com

File Number: 39108-2010

DATE ON WHICH ORDER WAS PRONOUNCED: May 14, 2024

LOCATION OF HEARING: Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO GRANTED THIS ORDER: The Honourable Madam Justice B. Johnston

UPON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as monitor
(the “**Monitor**”) of Griffon Partners Operation Corp., Griffon Partners Holding Corp., Griffon
Partners Capital Management Ltd., 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd.,
Stellion Limited and Spicelo Limited (collectively, the “**Debtors**”); **AND UPON** reviewing the

Fourth Report of the Monitor dated April 10, 2024 (the “**Fourth Report**”), the Fifth Report of the Monitor dated May 7, 2024 (the “**Fifth Report**”) and the other materials filed in these proceedings; **AND UPON** reviewing the Affidavit of Service of Eunyoung Jung sworn May 7, 2024, filed; **AND UPON** hearing submissions by counsel for the Monitor, counsel for the Debtors, counsel to Signal Alpha C4 Limited and Trafigura Canada Ltd., counsel to Tamarack Valley Energy Ltd. and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. Service of the 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 the time for service of this Application is abridged to that actually given.

Extension of Stay of Proceedings in respect of Certain Entities

2. The Stay Period as defined in paragraph 14 of the Amended and Restated Initial Order granted in these proceedings by the Honourable Justice Johnston on February 7, 2024, in respect of Spicelo Limited, Griffon Partners Holding Corp. and Griffon Partners Capital Management Ltd. is extended up to and including August 16, 2024.

Discharge of the Monitor and Termination of the CCAA Proceedings of Certain Entities

3. The Monitor has satisfied all of its duties and obligations pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) and the proceedings thereunder (the “**CCAA Proceedings**”) in relation to 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd. and Stellion Limited (collectively, the “**Griffon Ownership Entities**”).
4. Alvarez & Marsal Canada Inc. shall be discharged as Monitor of the Griffon Ownership Entities and shall have no further duties, obligations or responsibilities as Monitor over the Griffon Ownership Entities from and after such time, upon the filing of a Monitor’s Certificate, as attached as Schedule “A” to this Order, at which time these CCAA Proceedings in respect of the Griffon Ownership Entities shall be terminated without further Order of this Court, provided, however, that nothing in this Order affects the validity of any Orders made in these proceedings.

5. The actions, activities and conduct of the Monitor as reported in the Fourth Report and Fifth Report, and the fees and disbursements of the Monitor and its counsel as reported in the Fifth Report, are hereby approved.
6. Following its discharge as set out in paragraph 4 above, the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Alvarez & Marsal Canada Inc. in its capacity as Monitor.
7. Upon the filing of the Monitor's Certificate, the title and the style of cause in these proceedings shall be amended to delete 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD. and STELLION LIMITED, as parties in this Action.

Releases

8. Following the filing of the Monitor's Certificate, in respect of the Griffon Ownership Entities, the Monitor and its respective affiliates, officers, directors, shareholders, partners, employees, agents, counsel, executors, successors, administrators and assigns (collectively, the "**Released Parties**") shall be released and discharged from any and all claims that any person may have or may be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of, or in respect of the CCAA Proceedings as they relate to the Griffon Ownership Entities, or with respect to its conduct in the CCAA Proceedings as it relates to the Griffon Ownership Entities (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.
9. No action or other proceedings shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings as they relate to the Griffon Ownership Entities, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Parties.

10. The Monitor has never had and shall not in the future have any liability in regard to any act or omission of the Debtors, including, without limitation, in relation to the business of the Debtors, payment of and/or accounting for any taxes (including, without limitation, goods and services tax, corporate income taxes or other taxes owing to the Receiver General or Canada Revenue Agency) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by the Debtors.

Miscellaneous

11. The Monitor is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.
12. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Monitor and their 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and their agents in carrying out the terms of this Order.
13. The Monitor shall serve by courier, fax transmission, email transmission or ordinary post, and by posting to their website, a copy of this Order on all parties present at this Application and on all parties who are presently on the service list established in these proceedings and such service shall be deemed good and sufficient for all purposes.

BB Johnston

Justice of the Alberta Court of King's Bench

Schedule "A"

Clerk's Stamp

COURT FILE NUMBER 2401-01422
 COURT COURT OF KING'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 THE NOTICE OF INTENTION
 TO MAKE A PROPOSAL OF GRIFFON PARTNERS
 HOLDING CORPORATION, GRIFFON PARTNERS
 CAPITAL MANAGEMENT LTD., STELLION LIMITED,
 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815
 ALBERTA LTD. and SPICELO LIMITED

APPLICANT ALVAREZ & MARSAL CANADA INC.,
 IN ITS CAPACITY AS MONITOR

DOCUMENT **MONITOR'S CERTIFICATE**

ADDRESS FOR SERVICE **TORYS LLP**
 AND CONTACT 4600 Eighth Avenue Place East
 INFORMATION OF 525 - Eighth Ave SW
 PARTY FILING THIS Calgary, AB T2P 1G1
 DOCUMENT Attention: Kyle Kashuba
 Telephone: +1 403.776.3744
 Fax: +1 403.776.3800
 Email: kkashuba@torys.com
 File Number: 39108-2010

WHEREAS:

- A. Pursuant to an Order of the Honourable Madam Justice B. Johnston of the Alberta Court of King's Bench (the "**Court**") dated February 7, 2024, Alvarez & Marsal Canada Inc. was appointed as the Monitor (the "**Monitor**") of Griffon Partners Operation Corp., Griffon Partners Holding Corp., Griffon Partners Capital Management Ltd., 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., Stellion Limited and Spicelo Limited (collectively, the "**Applicants**").

- B. Pursuant to an Order of the Honourable Madam Justice B. Johnston of the Court dated May 14, 2024, the Court approved the Monitor's discharge in respect of 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd. and Stellion Limited (collectively, the "**Griffon Ownership Entities**"), to be effective upon the filing by the Monitor with the Court of a Monitor's Certificate confirming the administration of the within proceedings has been completed to the Monitor's satisfaction with respect to the Griffon Ownership Entities.

THE MONITOR HEREBY CERTIFIES the following:

1. The administration of the within proceedings. as it relates to the Griffon Ownership Entities, has been completed to the Monitor's satisfactions.
2. This Monitor's Certificate is dated •, 2024.

Alvarez & Marsal Canada Inc., in its capacity as Monitor of Griffon Partners Holding Corp., Griffon Partners Capital Management Ltd., 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., Stellion Limited and Spicelo Limited, and not in its personal or corporate capacity

Per: _____
 Name:
 Title:

This is **Exhibit "F"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, reading "Alyssa Roy", is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027



Calgary

May 27, 2024

Toronto

Randal Van de Mosselaer
Partner
Direct Dial: 403.260.7060
RVandemosselaer@osler.com
Our Matter Number: 1255876

Montréal

SENT BY ELECTRONIC MAIL
(ELISE.RUSSELL@ALBERTACOURTS.CA)

Ottawa

Vancouver

Alberta Court of King's Bench
1A Sir Winston Churchill Square
Edmonton Law Courts Building
Edmonton, AB T5J 0R2

New York

Attention: The Honourable Justice L.K. Harris

Re: *In the matter of Griffon Partners Operation Corporation et al*
Alberta Court of King's Bench Action No. 2401-01422

As you will be aware, we are counsel to the various applicants who appeared before you on April 12, 2024 to argue issues related to the doctrine of marshalling in the captioned action. Unfortunately, it appears that the parties are unable to agree on the form of Order arising from your Ladyship's decision, and I therefore write in an effort to resolve this impasse and schedule time to speak to this matter to settle the terms of the Order, or to resolve this issue as the Court may direct.

Enclosed please find:

- 1) The application of the Griffin Entities (as that term is defined in paragraph 1 of Your Ladyship's Reasons for Decision dated May 14, 2024 in these proceedings) which was before the Court on April 12, 2024;
- 2) The application of Tamarack Valley Energy Ltd. ("Tamarack") which was likewise before the Court on April 12, 2024;
- 3) The May 14, 2024 Reasons for Decision issued by your Ladyship following argument on these two applications on April 12, 2024;
- 4) Our proposed Form of Order which we provided to Tamarack's counsel in which we sought to capture your Ladyship's decision as set out in the Reasons for Decision; and
- 5) An email exchange between the writer and Tamarack's counsel from May 15 to May 24 in which Tamarack's counsel indicates that she is not prepared to agree to the enclosed form of Order because "The [Reasons for Decision] did not reference Tamarack's application, so all references to it should be removed from the Order." (The enclosed form of Order makes the addition in the preamble which was requested

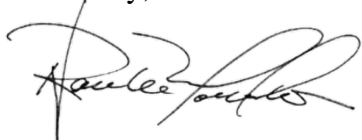
by Tamarack's counsel, and also adds the Second Report of the Monitor as being amongst the materials before the Court. We should also note that the Style of Cause in the enclosed form of Order removes reference to Griffin Partners Operation Corporation ("GPOC") in accordance with the declaration in the RVO that GPOC is no longer party to these proceedings and the style of cause is amended accordingly.)

Unfortunately, as you can see from the enclosed email exchange, the parties appear to be at an impasse with respect to the language to be used in the Order. Tamarack's counsel is of the view that the Tamarack application was not dealt with in your Ladyship's Reasons for Decision (notwithstanding the fact that the Tamarack application was before the Court on April 12 and was argued by Tamarack's counsel). Our views on the matter are set out in our May 20 email to Tamarack's counsel in the enclosed email exchange.

Given the apparent suggestion by Tamarack's counsel that Tamarack's application was not dealt with (and therefore presumably is still extant – even though it was set down to be heard and was actually argued on April 12) this is an issue of great significance to my clients. We therefore seek the assistance from the Court to settle the terms of this Order, and to advise if the Court would like to hear from the parties orally or in writing to resolve this issue.

We thank you for your assistance on this matter.

Yours truly,



Randal Van de Mosselaer
RSV:ep

c: Julie Treleaven, *Osler, Hoskin & Harcourt LLP* for the Applicants
Kyle Kashuba, *Torys LLP* for the Monitor (Alvarez & Marsal Canada Inc.)
Karen Fellowes, K.C. and Natasha Doelman, *Stikeman Elliott LLP* for the Primary Lenders (Trafigura Canada Limited and Signal Alpha C4 Limited)
Matti Lemmens and Jakub Maslowski, *Stikeman Elliott LLP* for the 2nd Lien Creditor (Tamarack Valley Energy)

COM March 25, 2024



COURT FILE NUMBER 2401-01422

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 COMPROMISE OR
 ARRANGEMENT OF GRIFFON PARTNERS OPERATION
 CORPORATION, GRIFFON PARTNERS HOLDING
 CORPORATION, GRIFFON PARTNERS CAPITAL
 MANAGEMENT LTD., STELLION LIMITED, 2437801
 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA
 LTD., and SPICELO LIMITED

DOCUMENT **APPLICATION**

ADDRESS FOR
 SERVICE AND
 CONTACT
 INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
 Brookfield Place, Suite 2700
 225 6 Ave SW
 Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
 Telephone: (403) 260-7000 / 7048
 Email: RVandemosselaer@osler.com / JTreleaven@osler.com
 File Number: 1246361

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: March 25, 2024
 Time: 2:00 p.m.
 Where: Edmonton Law Courts (by WebEx - See **Schedule "A"**)
 Before: The Honourable Justice Gill

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

Remedy Sought:

1. The Applicants, Griffon Partners Operation Corporation (“**GPOC**”), Griffon Partners Holding Corporation (“**GPHC**”), Griffon Partners Capital Management Ltd. (“**GPCM**”), Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited (“**Spicelo**”) (collectively, the “**Applicants**”), respectfully seek an Order substantially in the form attached hereto as **Schedule “B”**:
 - (a) abridging the time for service of notice of this Application (if necessary), deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
 - (b) declaring that Tamarack Valley Energy Ltd. (“**Tamarack**”) has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling or otherwise;
 - (c) declaring that Signal Alpha C4 Limited and Trafigura Canada Ltd. (collectively, the “**Lenders**”) are not required, pursuant to the doctrine of marshalling or otherwise, to exhaust their remedies under the Spicelo Guarantee (as that term is defined below) granted to the Lenders by Spicelo and the Spicelo Pledged Shares (as that term is defined below) prior to the Lenders realizing upon any of proceeds from the SISP (as that term is defined in the February 7, 2024 Amended and Restated Initial Order in these proceedings);
 - (d) declaring that:
 - (i) upon payment of all amounts owing to the Lenders pursuant to the Amended Loan Agreement (as that term is defined below); and
 - (ii) to the extent that Spicelo is required to make payment to the Lenders pursuant to the terms of the Spicelo Guarantee by which Spicelo unconditionally guaranteed the due and punctual payment, and the due performance of the Guaranteed Obligations (as that term is defined in the Spicelo Guarantee);

then Spicelo is, to the extent of such payment to the Lenders under the Spicelo Guarantee, entitled to be subrogated to the Lenders' security against GPOC, in priority to Tamarack;

- (e) granting leave to the Applicants pursuant to R.6.11(1)(f) to rely upon evidence filed in Action No. 25-2979735 in support of this Application, and
- (f) granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

2. GPCM, GPHC, and GPOC (collectively, the "**Griffon Entities**") are private corporations existing under the laws of the Province of Alberta focused on the exploration and development of light oil and natural gas liquids in the Viking formation in western Saskatchewan and eastern Alberta.
3. Spicelo is an investment company extra-provincially registered in Alberta which is beneficially owned by one of the directors of the Griffon Entities.
4. GPOC is the borrower (and GPCM and GPHC are guarantors) under a Loan Agreement dated July 21, 2022 with the Lenders as lenders, GLAS USA LLC as administrative agent, and GLAS Americas LLC as collateral agent (the "**Collateral Agent**") as amended as of August 31, 2022 (the "**Amended Loan Agreement**"), pursuant to which:
 - (a) GPOC borrowed approximately USD\$36 million from the Lenders, and
 - (b) GPOC granted to the Collateral Agent a security interest (the "**Lenders' Security Interest**") over all of GPOC's present and after-acquired real and personal property.
5. In addition, GPOC issued a Subordinated Secured Promissory Note dated July 21, 2022 in the amount of CAD\$20 million to Tamarack, and granted to Tamarack a security interest (subordinate to the Lenders' Security Interest) in all of GPOC's present or after-acquired property.

6. Spicelo entered into a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”) pursuant to which:
 - (a) Spicelo guaranteed GPOC’s obligations to the Lenders under the Amended Loan Agreement, and
 - (b) Spicelo pledged to the Collateral Agent for the benefit of the Lenders securities owned by Spicelo in the capital of Greenfire Resources Ltd. (the “**Spicelo Pledged Shares**”).
7. Accordingly:
 - (a) The Lenders and the Collateral Agent are the senior secured creditors over GPOC’s present and after-acquired property, and Tamarack’s security interest is subordinate to that of the Lenders and Collateral Agent; and
 - (b) The Collateral Agent (and only the Collateral Agent) holds a security interest over the Spicelo Pledged Shares.
8. On August 16, 2023, the Lenders served each of the Applicants with Demands for Payment and Notices of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).
9. On August 25, 2023 each of the Applicants filed Notices of Intention to Make a Proposal under the BIA.
10. On October 18, 2023 the Court granted an Order approving the SISP pursuant to which the assets of GPOC were to be marketed and sold. The SISP is nearing its conclusion.
11. It appears that the proceeds from the SISP and the sale of the GPOC assets will not satisfy in full the amount outstanding to the Lenders. Consequently, the Lenders will call upon the Spicelo Guarantee in an effort to be paid in full.
12. At an application heard by this Court on February 6, 2024, Tamarack (through its counsel) filed a Bench Brief asserting (incorrectly) that: “the doctrine of marshalling requires the

Lenders to realize upon the entirety of Spicelo's Pledged Shares pursuant to the [Spicelo Guarantee] between it and the Lenders prior to realizing upon any of proceeds from the sale of all or any portion of GPOC's assets pursuant to the ongoing [SISP]."

13. As the SISP is nearing its conclusion, it is critical that the rights and obligations of the Griffon Entities, Spicelo, the Lenders and Tamarack be determined so that all parties can be certain of their rights of recovery from the assets belonging to the Griffon Entities under the SISP, and from Spicelo.

Material or evidence to be used in Support of this Application:

14. Affidavit of Daryl Stepanic, sworn September 14, 2023, and filed September 15, 2023 in Action No. 25-2979735;
15. Affidavit of Daryl Stepanic, sworn January 29, 2024, and filed in this action on January 30, 2024;
16. Affidavit of Daryl Stepanic sworn March 15, 2024, to be filed, and
17. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

18. The *Alberta Rules of Court*, Alta Reg. 124/2010, including R.6.11(1)(f)

Applicable Acts and Regulations:

19. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
20. The *Judicature Act*, RSA 2000, c J-2, as amended.
21. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

22. None.

How the Application is Proposed to be Heard or Considered:

23. By WebEx, before the Honourable Justice Gill at the Edmonton Law Courts at 2 p.m. on March 25, 2024 or so soon thereafter as counsel may be heard.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule “A”

From: CommercialCoordinator QBCalgary <CommercialCoordinator.QBCalgary@albertacourts.ca>

Sent: Tuesday, February 27, 2024 8:50 AM

To: Jessica Watts <JWatts@stikeman.com>; Natasha Doelman <NDoelman@stikeman.com>; Karen Fellowes <KFellowes@stikeman.com>; Van de Mosselaer, Randal <rvandemosselaer@osler.com>; Kashuba, Kyle <kkashuba@torys.com>; Matti Lemmens <MLemmens@stikeman.com>; Treleaven, Julie <jtreleaven@osler.com>; Jakub Maslowski <jmaslowski@stikeman.com>; Jennilee Fleury <JFleury@stikeman.com>

Subject: WEBEX CONFIRMATION: 2401 01422 - GRIFFON PARTNERS OPERATION CORP. v. COMPANIES CREDITORS ARRANGEMENT ACT. - Mar 25, 2024 02:00 PM - GILL, J - Confirmed

The above booking is confirmed.

File #(s): 2401 01422

Style of Cause: GRIFFON PARTNERS OPERATION CORP. v. COMPANIES CREDITORS ARRANGEMENT ACT.

Date/Duration:

Mar 25 and 26, 2024 at 02:00 PM (Two half days)

Total: 150 Minute(s) + 150 Minute(s)

Booking Type/List: Commercial

Purpose of Hearing: Commercial Hearing

Counsel: Karen Linda Fellowes; Natasha Elaine Ada Doelman; Randal Steven Van de Mosselaer; Julie Laura Treleaven; Matti Cornelia Carpentier Leonie Lemmens; Jakub Jan Maslowski; Kyle David Kashuba;

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

Notes: Appoint Receiver

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted.
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Schedule "B"

Form 7
[Rule 3.8]

Clerk's Stamp

COURT FILE NUMBER 2401-01422

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 amendedAND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF GRIFFON PARTNERS OPERATION
CORPORATION, GRIFFON PARTNERS HOLDING
CORPORATION, GRIFFON PARTNERS CAPITAL
MANAGEMENT LTD., STELLION LIMITED, 2437801
ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA
LTD., and SPICELO LIMITEDDOCUMENT **ORDER**ADDRESS FOR **OSLER, HOSKIN & HARCOURT LLP**
SERVICE AND Barristers & Solicitors
CONTACT Brookfield Place, Suite 2700
INFORMATION OF 225 6 Ave SW
PARTY FILING THIS Calgary, AB T2P 1N2
DOCUMENTSolicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361**DATE ON WHICH ORDER WAS PRONOUNCED:** March 25, 2024**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton, Alberta**JUSTICE WHO MADE THIS ORDER:** The Honourable Justice Gill

UPON the application of Griffon Partners Operation Corporation ("**GPOC**"), Griffon Partners Holding Corporation ("**GPHC**"), Griffon Partners Capital Management Ltd. ("**GPCM**"), Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta

Ltd., and Spicelo Limited (“**Spicelo**”, and collectively, the “**Applicants**”); **AND UPON** reading the Affidavit of Daryl Stepanic, sworn September 14, 2023, and filed September 15, 2023 in Action No. 25-2979735; **AND UPON** reading the Affidavit of Daryl Stepanic, sworn January 29, 2024, and filed in this action on January 30, 2024; **AND UPON** reading the Affidavit of Daryl Stepanic, sworn March 15, 2024; **AND UPON** hearing from counsel for the Applicants, counsel for Alvarez & Marsal Canada Inc. as Monitor, counsel for Tamarack Valley Energy Ltd. (“**Tamarack**”), counsel to Signal Alpha C4 Limited and Trafigura Canada Ltd. (collectively, the “**Lenders**”), and any other interested party;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this application is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other person other than those persons served is entitled to service of this application.
2. Tamarack has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling or otherwise.
3. The Lenders are not required, pursuant to the doctrine of marshalling or otherwise, to exhaust their remedies under the Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”) granted to the Lenders by Spicelo and the shares pledged to the Lenders by Spicelo pursuant to the Spicelo Guarantee prior to the Lenders realizing upon any of proceeds from the SISP (as that term is defined in the February 7, 2024 Amended and Restated Initial Order in these proceedings).
4. Upon payment of all amounts owing to the Lenders pursuant to the Amended Loan Agreement between the Lenders as lenders and GPOC as borrower, and to the extent that Spicelo is required to make payment to the Lenders pursuant to the terms of the Spicelo Guarantee, then Spicelo is, to the extent of such payment to the Lenders under the Spicelo Guarantee, entitled to be subrogated to the Lenders’ security against GPOC, in priority to Tamarack.

5. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

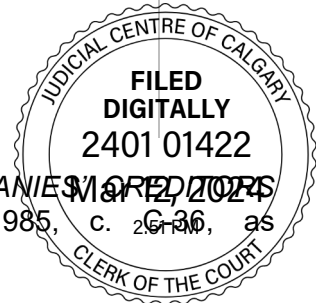
COURT FILE NUMBERS 2401-01422

Clerk's stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE COMPANIES AND WINDFARM
ARRANGEMENT ACT, R.S.C. 1985, c. 22(1), as
amended



AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF GRIFFON PARTNERS
OPERATION CORPORATION, GRIFFON PARTNERS
HOLDING CORPORATION, GRIFFON PARTNERS
CAPITAL MANAGEMENT LTD., STELLION LIMITED,
2437801 ALBERTA LTD., 2437799 ALBERTA LTD.,
2437815 ALBERTA LTD., and SPICELO LIMITED

DOCUMENT **APPLICATION BY TAMARACK VALLEY ENERGY LTD.**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

Matti Lemmens
Tel: (403) 266 9064
Fax: (403) 266 9034

Counsel for Tamarack Valley Energy Ltd.

File No.: 136603.1015

NOTICE TO THE RESPONDENTS

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 March 26, 2024
Time 2:00 p.m.
Where Edmonton Law Courts
Before Whom: The Honourable Justice J.J. Gill

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

Remedy claimed or sought:

1. The applicant, Tamarack Valley Energy Ltd. (“**TVE**”), respectfully seeks an Order substantially in the form attached hereto as Schedule “**A**”:

- a. abridging the time for service of notice of this Application (if necessary), deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
- b. abridging the time for service of notice of any Notices of Appointment for Questioning served under Rule 6.8 of the Alberta *Rules of Court* (if necessary), and deeming service of any such Notices of Appointment to be good and sufficient;
- c. directing that pursuant to the doctrine of marshalling, Signal Alpha C4 Limited and Trafigura Canada Ltd. (collectively, the “**Lenders**”), are required to realize upon the Share Pledge (as defined below) provided by Spicelo Limited (“**Spicelo**”) in satisfaction of the debt owing by Griffon Partners Operation Corp. (“**GPOC**”) in priority to the proceeds from the SISP (as defined below);
- d. declaring that Spicelo is not entitled to subrogate to the Lenders’ security position as against GPOC in priority to TVE; and
- e. such further and other relief as counsel may request and this Honourable Court deem just.

Grounds for making this application:

Priority of Secured Interests of the Lenders and TVE

2. On July 21, 2022, Griffon Partners Operation Corp. (“**GPOC**”) purchased certain oil and gas assets located in Alberta and Saskatchewan from TVE for CAD\$70 million (the “**TVE Transaction**”).

3. To finance the TVE Transaction, GPOC entered into a Loan Agreement with the Lenders dated July 21, 2022, and amended as of August 31, 2022 (collectively, the “**Loan Agreement**”), whereby the Lenders agreed to advance USD\$35,869,565.21.

4. Pursuant to the Loan Agreement, the Lenders are GPOC's senior secured creditors with a security interest in all of GPOC's present and future real and personal property.

5. As security for payment of performance of GPOC's obligations under the Loan Agreement, Spicelo and the Lenders entered into a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the "**Share Pledge**"), pursuant to which Spicelo pledged all of the common shares it holds in Greenfire Resources Ltd. as collateral (the "**Pledged Shares**").

6. Under the terms of the Share Pledge, in the event of a default by GPOC of the Loan Agreement, *inter alia*:

- a. Spicelo is absolutely and unconditionally liable to the Lenders for GPOC's obligations under the Loan Agreement as primary obligor; and
- b. the Lenders are entitled to realize upon the Pledged Shares by sale, transfer, delivery or the appointment of a receiver over the Pledged Shares.

7. The TVE Transaction was also financed by TVE pursuant to a Subordinated Secured Promissory Note in the amount of \$20 million plus interest granted by GPOC in favour of TVE (the "**Promissory Note**"), pursuant to which TVE has a second priority security interest in all of GPOC's present or after-acquired property, subordinate only to the security interests in same granted to the Lenders.

GPOC Insolvency Proceedings

8. Within four months of entering into the Loan Agreement, GPOC defaulted on same.

9. On August 16, 2023, the Lenders issued Demands for Payment and Notices of Intention to Enforce Security pursuant to section 244 of *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") to GPOC, Spicelo, and all other debtors and guarantors in these proceedings (Griffon Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., collectively with GPOC and Spicelo, the "**Debtors**"), demanding payment for the full amount owing under the Loan Agreement by GPOC.

10. On August 25, 2023, the Debtors filed Notices of Intention to Make a Proposal under the BIA (the "**NOI Proceedings**").

11. On October 18, 2023, an Order was granted by this Honourable Court approving a Sale and Investment Solicitation Process through which GPOC's assets were to be marketed and sold (the "**SISP**").

12. The SISP was extended on several occasions without a proposal being put to the Lenders and TVE prior to the expiry of the NOI Proceedings.

13. On February 7, 2024, the NOI Proceedings were continued in the within proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, with a view of concluding the SISP and presenting a proposal to the Lenders and TVE.

Marshalling and Subrogation

14. The Lenders are presently owed in excess of CAD\$51 million by GPOC and have recourse to recover this debt from two sources: the proceeds from the sale of GPOC's assets under the SISP, and/or by realizing upon Spicelo's Pledged Shares.

15. TVE is owed in excess of CAD\$23 million by GPOC under the Promissory Note. TVE is not a party to any share pledge agreement with Spicelo and does not have any recourse for recovery of amounts owing by GPOC against Spicelo or any other of the Debtors.

16. As such, TVE's sole source of recovery of the amount owing by GPOC under the Promissory Note is from the proceeds of the SISP.

17. The SISP is nearing its conclusion and the proceeds from same will be insufficient satisfy the amount owing to the Lenders. As such, it is highly probable that there will be no funds available to TVE in the event the Lenders exercise their first priority security and realize upon all of the proceeds from the SISP.

18. TVE submits that, pursuant to the equitable doctrine of marshalling, the Lenders must first realize upon the Pledged Shares in full under the Share Pledge prior to any outstanding balance owing by GPOC from the SISP, as this would allow TVE to recover some portion of the amount owing by GPOC under the Promissory Note.

19. TVE further submits that under the terms of the Share Pledge and at equity, Spicelo does not have a right to subrogate to the Lenders' security position as against GPOC in priority to TVE.

Material or evidence to be relied on:

20. The pleadings filed in the within Action;

21. The pleadings filed in Court of King's Bench File Numbers 25-2979735 and B201-979735;
22. Such further and other material as counsel may rely upon and this Court may permit.

Applicable rules:

23. Parts 1 and 6, Rules 1.3, 1.4 of the *Alberta Rules of Court*, Alta Reg 124/2010.
24. Such further and other rules as counsel may advise and this Honourable Court may rely upon.

Applicable Acts and regulations:

25. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.
26. *Judicature Act*, RSA 2000, c J-2, as amended.
27. *Statute of Elizabeth*, 1571 (UK) 13 Eliz, c 5.
28. *Fraudulent Preferences Act*, RSA 2000, c F-24, as amended.
29. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

30. None.

How the application is proposed to be heard or considered:

31. By WebEx, before the Honourable Justice J.J. Gill at the Edmonton Law Courts at 2:00 p.m. on March 26, 2024 or so soon thereafter as counsel may be heard.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBERS 2401-01422

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS 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 GRIFFON PARTNERS OPERATION CORPORATION, GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., STELLION LIMITED, 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO LIMITED

DOCUMENT**ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

Matti Lemmens
Tel: (403) 266 9064
Fax: (403) 266 9034

Counsel for Tamarack Valley Energy Ltd.

File No.: 136603.1015

DATE ON WHICH ORDER WAS PRONOUNCED: March 26, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice J.J. Gill

UPON THE APPLICATION of Tamarack Valley Energy Ltd. ("**TVE**"); **AND UPON** noting that the proceeds from GPOC's sale and investment solicitation process ("**SISP**") will be insufficient to pay the amounts owing to the Secured Creditors by GPOC (the "**SISP Proceeds**"); **AND UPON** noting that the Lenders have recourse to recover the amounts

owing by GPOC from the SISP Proceeds and by realizing upon shares of Greenfire Resources Ltd. pledged by Spicelo (the “**Pledged Shares**”) pursuant to a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Share Pledge**”); **AND UPON** noting that TVE, as the second subordinated debtor has recourse only against the SISP Proceeds for amounts owing by GPOC; **AND UPON** reading the Bench Brief of TVE; **AND UPON** reading the Bench Brief of Trafigura Canada Limited and Signal Alpha C4 Limited (the “**Lenders**” and with TVE, the “**Secured Creditors**”); **AND UPON** reading the Bench Brief of Griffon Partners Operation Corporation (“**GPOC**”) and Spicelo Limited (“**Spicelo**”); **AND UPON** hearing submissions by counsel for the Secured Creditors, GPOC and Spicelo;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.
2. The time for service for any notices for appointment for questioning under Rule 6.8 of the *Alberta Rules of Court* are hereby abridged and deemed good and sufficient and this application is properly returnable today.

MARSHALLING AND SUBROGATION

3. The Lenders shall realize upon all of the Pledged Shares in accordance with the Share Pledge in satisfaction of debt owing by GPOC to the Lenders prior to realizing upon any of the SISP Proceeds.
4. TVE shall be entitled to any remaining SISP Proceeds following the Lenders’ realization as set forth in paragraph 3 above, subject only to any administration charges or other charges ranking in priority to the Lenders’ senior secured position.

5. Spicelo shall not advance any subrogated claim against GPOC for the recovery from the SISP Proceeds the value of the Pledged Shares or any other amount paid or transferred to the Lenders under the Share Pledge.

Justice of the Court of King's Bench of Alberta



Court of King's Bench of Alberta

Citation: Griffon Partners Operation Corporation (Re), 2024 ABKB 277

Date:
Docket: 2401 01422
Registry: Calgary

In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985,
c C-36 as amended;

And in the Matter of the Compromise or Arrangement of Griffon Partners
Operation Corporation, Griffon Partners Holding Corporation, Griffon Partners
Capital Management Ltd., Stellion Limited., 2437801 Alberta Ltd.,
2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited

**Griffon Partners Operation Corporation, Griffon Partners Holding Corporation,
and Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd.,
2437799 Alberta Ltd., 2437815 Alberta Ltd. and Spicelo Limited**

Applicants

**Reasons for Decision
of the
Honourable Justice L.K. Harris**

I. Introduction

[1] Griffon Partners Operation Corporation ("GPOC"), Griffon Partners Holding Corporation ("GPHC") and Griffon Partners Capital Management Ltd. (GPCM") (collectively, the "Griffon Entities") are private corporations registered in Alberta, engaged in the exploration and development of oil and gas in Alberta and Saskatchewan. In August 2023, the Griffon Entities each filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 ("NOI"). The NOIs were filed in response to senior secured creditors to GPOC demanding payment under a loan agreement between those creditors and GPOC.

[2] An issue has now arisen as to the order in which the senior secured creditors should realize upon their security. A junior secured creditor argues that the principle of marshalling applies so that some security is preserved for them. The Applicants argue that marshalling is not available in this case. They say that marshalling has never been applied in these factual circumstances, and that even if marshalling were available, it would be pointless because the doctrine of subrogation would then apply to extinguish any ability of the junior secured creditor to recover.

[3] The question I must resolve is whether marshalling is available in this case. If it is, then I must go on to resolve the question of whether there is a right of subrogation available which would effectively extinguish the subordinate creditor's claim in any event.

II. Background

[4] GPHC and GPOC are wholly owned subsidiaries of GPCM. All three entities share primarily the same directors, including Jonathan Klesch ("Klesch") (the exception being GPHC, which has an additional director).

[5] GPCM is, in turn, wholly owned by the four holding companies belonging to the four directors. Klesch's holding company is Stellion Limited ("Stellion"). Stellion is incorporated in the Republic of Cyprus and is extra-provincially registered in Alberta.

[6] Klesch also is the sole beneficial shareholder of a second corporation, Spicelo Limited ("Spicelo"), also incorporated in Cyprus and extra-provincially registered in Alberta. The only significant assets held by Spicelo are approximately 1.125 million shares in Greenfire, a private Alberta Corporation specializing in Western Canadian oil and gas.

[7] GPOC is the operating entity which holds all the Griffon Entities' interests and conducts all of the Griffon Entities' business and operations. GPOC acquired all its holdings from Tamarack Valley Energy Ltd ("Tamarack") in July 2022, for a total purchase price of \$70.0 million.

[8] GPOC's purchase from Tamarack was funded in part by financing pursuant to an Amended Credit Agreement between GPOC as the borrower and Trafigura Canada Limited and Signal Alpha C4 Limited as lenders (the "Lenders"). Pursuant to the Amended Credit Agreement, the Lenders made available a non-revolving, single advance term loan facility in the maximum principal amount of US\$35,869,565.21. The Lenders were granted security over all GPOC's present and after-acquired property.

[9] GPCM and GPHC are guarantors under the Amended Credit Agreement. The Directors' four holding companies are also guarantors under a Limited Recourse Guarantee and Securities Pledge Agreement. Finally, Spicelo is a guarantor pursuant to a Limited Recourse Guarantee and Securities Pledge Agreement (the "Spicelo Guarantee"). The Spicelo Guarantee is generally limited to the securities held by Spicelo in Greenfire.

[10] GPOC's purchase from Tamarack was also funded in part pursuant to a Subordinated Secured Promissory Note for \$20.0 million issued by GPOC to Tamarack (the "Subordinated Tamarack Note"). The Subordinated Tamarack Note is secured against all present and after-acquired property of GPOC. Tamarack agreed to subordinate all security interests granted under the Subordinated Tamarack Note to all senior loan obligations to the Lenders under the Amended Credit Agreement.

[11] Tamarack has no security interest in Spicelo or the Greenfire shares, and Spicelo owes no obligations to Tamarack.

[12] In late 2022, GPOC ran into financial difficulties and defaulted on its payments due under the Amended Credit Agreement. Efforts to refinance or restructure the business were unsuccessful, and on August 16, 2023, the Lenders served Demands for Payment and Notices of Intention to Enforce Security pursuant to s 244 of the *BIA*.

[13] On August 25, 2023, the Griffon Entities responded by each filing an NOI, stating that the Griffon Entities' business was viable and had significant value, and that the Lenders and Tamarack were over-collateralized.

[14] On October 18, 2023, the Court granted an Order approving a Sale and Investment Solicitation Process ("SISP") pursuant to which the assets of GPOC were to be sold. The SISP is nearing completion, but it appears that the proceeds from the sale of the GPOC assets will not be sufficient to satisfy the full amount outstanding to the Lenders, let alone the amount owed to Tamarack. This will necessitate a liquidation of at least some of the Greenfire shares held by Spicelo.

[15] Tamarack objects to the Lenders realizing upon the proceeds from the SISP first because all of those proceeds will be used to satisfy GPOC's obligations to the Lenders, leaving nothing to satisfy GPOC's obligations to Tamarack. Tamarack says that the Lenders should resort to its security against the Spicelo assets first (as a guarantor for the GPOC indebtedness) then the proceeds from the SISP, leaving something to satisfy GPOC's obligations to Tamarack under the Subordinated Tamarack Note.

[16] On March 15, 2024, the Griffon Entities, the Directors' four holding companies and Spicelo filed an Application for a declaration that:

- (a) Tamarack has no claim against the assets of Spicelo;
- (b) The Lenders are not required to exhaust their remedies pursuant to the Spicelo Guarantee prior to realizing on the proceeds from the SISP; and
- (c) Spicelo is subrogated to the Lenders' security against GPOC in priority to Tamarack.

[17] The Application is opposed by Tamarack. The Lenders take no position, saying they simply wish to have the Court's direction as to which security should be realized first.

III. Analysis

a. The General Principles of Marshalling

[18] The equitable doctrine of marshalling is described by Manderscheid, J in *Gerrow v Dorais*, 2010 ABQB 560 at para 21:

In its simplest form the doctrine of marshalling dictates that if a creditor has two funds to draw upon to satisfy the debt, the Court will require him to take satisfaction from that fund upon which another creditor has no security.

[19] Manderscheid J notes that the "seminal" case on marshalling in Alberta is *First Investors Corporation Ltd. v Veeradon Developments Ltd.*, 1988 ABCA 38. There, Belzil JA sets out the "leading formulation of the doctrine of marshalling" as a principle of equity:

The leading formulation of the doctrine of marshalling as a principle of equity is that of Lord Hardwicke in *Lanoy v The Duke and Dutchess of Athol (1742)*. 2 Atk. 444. He said at p 669:

“It is not then the constant equity of this court that if a creditor has two funds, he shall take his satisfaction out of that fund upon which another creditor has no lien. (*Vide Clifton v Burt*, 1 Cox’s P.W. 679, note 1. *Gallon v Hancock*, ante, 436, 438. *Martin v Martin*, 1 Ves. 212.)

Suppose a person, who has two real estates, mortgages both to one person, and afterwards only one estate to a second mortgagee, who had no notice of the first; the court, in order to relieve the second mortgagee, have directed the first to take his satisfaction out of the estate only which is not in mortgage to the second mortgagee, if that is sufficient to satisfy the first mortgage, in order to make room for the second mortgage, even though the estates descended to two different persons.”

[20] See also *Condominium Corp No 082 6970 v 1117398 Alberta Ltd*, 2012 ABQB 233 and *Wolfe et al v Taylor et al*, 2020 MBCA 44.

[21] There are criteria which must be met before marshalling becomes available. In *House v Baird*, 2019 ONSC 1712 (CanLII) at para 39 the Court states:

A number of common law rules have developed in the application of marshalling, although its equitable nature enables courts to craft relief appropriate to each case. There are five preconditions for marshalling:

- (a) two creditors;
- (b) one common debtor;
- (c) two funds of the debtor with the superior creditor having access to both and the inferior creditor to but one;
- (d) no interference with the choice of remedy of the superior creditor; and
- (e) no prejudice to third parties.

[22] Considering whether these criteria are met in this case, there certainly is a senior creditor (the Lenders) and a junior creditor (Tamarack), but there is not a single debtor with two funds. Rather, there is one debtor indebted to both creditors (GPOC) and one surety having provided a guarantee only to the Lenders (Spicelo).

[23] Neither *Gerrow, Condo Corp* nor *First Investors* directly address the question of when it might be permissible to apply the doctrine of marshalling in cases where there is more than one debtor. This point was raised in *Strategic Acquisition Corp. v Multus Investment Corporation*, 2013 ABQB 534 at paras 13-14:

The principle of marshalling is straightforward. Where there are two creditors of the same debtor and one of those creditors has the ability to recover from two funds of the debtor and the other creditor only has resort to one, the court will

marshal the funds to pay out both creditors as much as possible. A first mortgagee, however, cannot be prejudiced by marshalling: *Snell's Principles of Equity*, 28th ed, at 416, cited in ***First Investors Corp. v Veeradon Developments Ltd***, 1988 ABCA 38 (CanLII), 47 DLR (4th) 446, 84 AR 364 at para 11 (ABCA).

There is nothing in the doctrine that says that both creditors must be secured or mortgagees and there is nothing that says that it only operates where there is one debtor rather than related debtors...

[24] The issue before the Court in ***Strategic Acquisition*** was a summary judgment application. The statement above is *obiter*. There are other authorities however which do provide guidance on the issue of whether there is an exception to the single-debtor rule, and under what circumstances that exception might be employed.

b. The Exception to the Single-Debtor Rule

[25] In ***Ernst Brothers Co. v Canada Permanent Mortgage Corporation*** (1920) 47 OLR 362 at pp 367-8, affirmed 57 DLR 500 (CA) the Court affirms the general principles of marshalling, but in a situation where there were multiple debtors. In ***Ernst Brothers***, two brothers each owned a lot of land which they each mortgaged to a single mortgagee to secure a single loan. One of the brothers then created a charge on his lot for a second loan before selling his lot to his brother. The Court concluded that the doctrine of marshalling applied.

[26] Another Ontario case considering multiple debtors is ***807933 Ontario Inc. v Paddon and Associates***, 1998 CanLII 3766. There, a mortgagee obtained security from two property owners (who were spouses) as security for a single debt. Each property owner also cross-guaranteed each other's mortgage. A second secured creditor for one spouse sought an order directing marshalling, requiring the mortgagee to recover from the security on the property of the other spouse. The Court states:

The key issue in the case on appeal is whether Mr. and Mrs. Allison were common debtors to the appellant. While it is conceded that they were common debtors to Tomas, it would appear to me on the facts of the case that only Mr. Allison was a debtor of the appellant and all the other creditors whose claims arose out of the Meaford Project. Mrs. Allison had nothing to do with those debts. If the court was to apply the doctrine of marshalling to Mrs. Allison's Parcel A so that Mr. Allison's Parcel B will be available to satisfy the appellant, then Mrs. Allison would be forced to pay her husband's debts for which she is not in law obligated. Marshalling was not intended to create such an inequity between two debtors. (emphasis added).

[27] The Court in ***Paddon*** distinguished ***Ernst Brothers*** on its facts because in ***Ernst Brothers***, both brothers executed the mortgage, and it was registered on both lots. Both covenanted to repay the full amount of the mortgage, and so there was no inequity in compelling one brother to pay the full amount owed.

[28] ***Paddon*** does note that the trial judge's decision in ***Ernst Brothers*** explains why marshalling may be used only in some cases where there are multiple debtors. The trial judge in ***Ernst Brothers*** concluded, at p 371, that "[i]t would be inequitable to permit the securities to be marshalled if in the result one who was not under any obligation to pay both debts should suffer".

[29] In *Paddon*, the Court goes on to state:

Unless the appellant can establish that it is just and equitable that Mrs. Allison should pay in the first instance, it has no equity to compel a person such as Tomas, who has resort to both funds, to go against Mrs. Allison's parcel of land.

[30] The exception to the single debtor rule was employed in *Brown v Canadian Imperial Bank of Commerce* (1985) CanLII 2116 (ONSC) and in *G Ruso Construction Ltd. v Laviola* (1979), 27 Chitty's LJ 136. In *Brown*, Southey J found that marshalling did apply to a situation where there were two debtors that were in effect common since they were in a surety-principal relationship, i.e., the debtor facing the claims of two creditors was in effect a creditor of the second debtor. In *G Ruso Construction Ltd.*, the Court concluded that for marshalling to apply there must be a relationship or equities between the two debtors such that one debtor is entitled to require the other to be primarily liable to either of the creditors.

[31] There clearly is an exception to the general rule that there be one debtor. That exception appears to be that marshalling may be employed in cases involving more than one debtor when one of the debtors can put primary liability upon the other, for example, when the debtors are principal and surety: *Halsbury's Laws of England*, vol. 16, 4th ed (1980) at p 786, para 877. Such a relationship must exist, otherwise it would be inequitable to force one debtor to pay the other's debt when that debtor was not under any obligation to do so: *Paddon*.

c. Should the Exception to the Single Debtor Rule be Employed Here?

[32] The Griffon Entities point out that the facts of this case are distinct from the circumstances in which the exception to the single debtor rule was applied. In each of *Brown*, *G Russo* and *Ernst Brothers*, the Court held that it was equitable to apply marshalling because the relationship between the debtors was such that primary liability could rest with the principal debtor. The Griffon Entities say that is not the case here. Tamarack does not disagree that the facts in this case are distinct from that scenario but argues that the flexibility of the doctrine of marshalling allows me to consider other circumstances, and that equity demands its application here. The Lenders are doubly secured and thus not prejudiced by marshalling. Tamarack says that there are no authorities that prohibit the position they are taking.

[33] Asserting that it is equitable to employ marshalling in this case simply because the Lenders are doubly secured misses the point. Further, although there are no authorities expressly prohibiting marshalling in these circumstances, this does not tell the entire story: the authorities do explain why there is only a limited exception to the single-debtor rule. The Court must be satisfied that one of the debtors is in a position to put primary liability upon the other – otherwise, it would be inequitable to enforce a debt against an entity who has no obligation to pay it. An example showing that marshalling is not so flexible as Tamarack argues is found in *Green v Bank of Montreal*, 1999 CanLII 821 (ONCA). We must look to whether there is a relationship between GPOC on one hand and Spicelo on the other such that it is equitable to compel the Lenders to enforce their security with Spicelo first, leaving some assets within the SISF for Tamarack.

[34] Tamarack argues that it is equitable to employ marshalling in this case for two reasons.

[35] First, it says that there is a close relationship between the Griffon Entities and Spicelo, pointing to Klesch's ownership role in and control of GPOC, Stellion and Spicelo, arguing that "there is effectively only one debtor."

[36] Second, Tamarack argues that I should consider the fraudulent and inequitable conduct of Klesch. Tamarack argues that Klesch caused GPOC to enter into the Subordinated Tamarack Note with no intention of repaying Tamarack and sought to disregard or discharge Tamarack's security interest in the course of the refinancing negotiations. Tamarack argues that corporate veils ought to be pierced in this circumstance to expose Klesch's involvement and justify marshalling as an exception to the single debtor rule. Tamarack has cited American authorities for this proposition: *Re Field*, 226 B.R. 178, 183 (*Bankr. D.S.C.* 1998) (quoting *Borges*, 184 B.R. at 879, n.3); *Fundex Capital Corp. v Balaber-Strauss* (In *Re Tampa Chain Co.*), 53 B.R. 772, 778-79 (*Bankr. S.D.N.Y.* 1985).

[37] Simply pointing to Klesch's role in the various corporate entities does not automatically create the relationship necessary for marshalling.

[38] Whether GPOC and Spicelo are truly affiliated companies as that term is used in the *Alberta Business Corporations Act*, RSA 2000 ch B-9 ("*BCA*") is debateable, as none of the criteria identified in s 2 of the *BCA* appear to be met. They do share a director in Klesch, but while Spicelo is wholly owned by Klesch, GPOC is wholly owned by GPHC, which in turn is wholly owned by GPCM. Stellion (Klesch's holding company) owns 25% of GPCM's Class A shares in addition to 79.5% of GPCM's Class B shares. So, while Stellion and Spicelo are both wholly owned by Klesch the corporate structure of the Griffon Entities does not allow the conclusion that there is an affiliation between GPOC and Spicelo such that one can conclude there is "effectively only one debtor". One cannot say that Spicelo and GPOC are truly "alter egos" of each other.

[39] Further, I am not persuaded that there are circumstances that permit me to lift corporate veils such that I may consider the actions of Klesch apart from those of the corporate entities.

[40] The concept of piercing a corporate veil was explained recently by the Alberta Court of Appeal in *Swanby v Tru-Square Homes Ltd*, 2023 ABCA 224, where the Court states starting at para 32:

The concept of separate legal personality was established in *Salomon v Salomon & Co*, [1897] AC 22, 22-32, 51-54 (HL), in which the court said: "either the limited company [is] a legal entity or it [is] not. If it [is], the business belong[s] to it and not to Mr. Salomon"; and further, "the company is at law a different person altogether from subscribers to the memorandum". That distinction is the "corporate veil" between the company and its owner.

The *Alberta Business Corporations Act*, RSA 2000, c B-9, ss 16(1), 46(1), provides for a corporation establishing a separate corporate personality from its shareholders, with no exception for single shareholder corporations. Additionally, the *Interpretation Act*, RSA 2000, c I-8, s 16, provides that the establishment of a corporation vests in the corporation the right to contract and be contracted with in its corporate name, makes the corporation liable to be sued in its corporate name, and exempts from personal liability individual members of the corporation.

Courts are generally unwilling to lift or pierce the corporate veil unless required to do so by statute or in the face of extraordinary circumstances: Kevin P McGuinness, *Canadian Business Corporations Law*, 3rd ed (Toronto: LexisNexis, 2017), vol 1, 7.47. It requires a court to disregard the fundamental

principle of separate identity and view the corporation as an “agent” or “puppet” of its controlling shareholder.

[41] Only in such extraordinary circumstances is the directing mind of a corporation is held to be responsible for the liabilities and obligations of the corporation.

[42] There are many Canadian decisions which describe circumstances in which it might be appropriate to lift the corporate veil in order to consider the actions of a shareholder. In *Kosmopoulos v Constitution Insurance Co*, 1987 CanLII 75 (SCC), [1987] 1 SCR 2 at p 10:

As a general rule a corporation is a legal entity distinct from its shareholders: *Salomon v Salomon & Co.*, [1897] A.C. 22 (H.L.) The law on when a court may disregard this principle by “lifting the corporate veil” and regarding the company as a mere “agent” or “puppet” of its controlling shareholder or parent corporation follows no consistent principle. The best that can be said is that the “separate entities” principle is not enforced when it would yield a result “too flagrantly opposed to justice, convenience or the interests of the Revenue”: L.C.B. Gower, *Modern Company Law* (4th ed. 1979), at p. 112.

[43] In *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25, the Court notes at para 53:

A frequently cited case is *Transamerica Life Insurance Company of Canada v Canada Life Assurance Company (1996)*, 1996 CanLII 7979 (ON SC), 28 OR (3d) 423, aff’d [1997] OJ No 3754 (CA). It concluded at p 431 that *Kosmopoulos* did not signal a departure from the traditional rule set out in *Salomon v Salomon & Co.*, [1897] AC 22:

There are undoubtedly situations where justice requires that the corporate veil be lifted. The cases and authorities already cited indicate that it will be difficult to define precisely when the corporate veil is to be lifted, but that lack of a precise test does not mean that a court is free to act as it pleases on some loosely defined “just and equitable” standard. . . (at p 433)

Transamerica confirms at pp 433-34 that mere control, which in this context means “complete domination”, is not sufficient to lift the corporate veil. There must additionally be some element of fraud, improper purpose, or improper activity which caused the plaintiff’s loss: see *Aubin v Petrone*, 2020 ABCA 13 at paras 23-26, 100 Alta LR (6th) 10; *Yaiguaje v Chevron Corporation*, 2018 ONCA 472 at paras. 67, 70, 141 OR (3d) 1, leave refused April 4, 2019, SCC #38183.

...

It is sometimes said that the corporate veil will be lifted where the corporation is merely a “sham”, or is just the “alter ego” of its controlling shareholders. This equally imprecise test is not often helpful, unless the corporation never, from the beginning, had any legitimate business or assets of its own and was merely being used as a pretext. As noted by Lord Neuberger of Abbotsbury PSC in *VTB Capital plc v Nutritek International Corp.*, [2013] UKSC 5 at para 124, [2013] 2 AC 337:

124. . . . Words such as “façade”, and other expressions found in the cases, such as “the true facts”, “sham”, “mask”, “cloak”, “device”, or “puppet” may be useful metaphors. However, such pejorative expressions are often dangerous, as they risk assisting moral indignation to triumph over legal principle, and, while they may enable the court to arrive at a result which seems fair in the case in question, they can also risk causing confusion and uncertainty in the law. . . .

...

One thing is clear. It is an error of principle to equate “control” of the corporation with the corporation merely being the alter ego of the shareholders. The *Alberta Business Corporations Act*, RSA 2000, c. B-9, permits “one person corporations” and gives them a separate legal personality just like any other corporation. It is an error to conclude that the corporation has no “real” independent existence simply because one person, being the sole shareholder and director, controls the corporation and is the ultimate beneficiary of any economic value within the corporation. *Kosmopoulos* at p 11 cautioned against recognizing an “indefensible distinction” between single person corporations and other corporations.

[44] In the circumstances of this case, there is no basis for me to lift the corporate veil and consider the actions of Klesh separate and apart from GPOC and Spicelo such that they could form the basis for an equitable application of the doctrine of marshalling. The evidence demonstrates that the parties in this case are all sophisticated commercial actors and that there is no reason to believe that they, including Tamarack, were unable to bargain and reach the agreements they felt were in their interests and commercially reasonable. Tamarack did not bargain to have Spicelo pledge its Greenfield shares as security for the debt it was owed. At all times Tamarack understood that it was contracting with GPOC, not Klesch or Spicelo. It was undoubtedly aware of the implications of subordinating its security to that of the Lenders without obtaining further guarantees. While Tamarack might take issue with some of Klesh’s beliefs and actions, I cannot conclude that they amount to fraud or extraordinary circumstances that should be considered in determining whether the equitable principle of marshalling should apply.

[45] The circumstances of this case do not permit marshalling. While it is clear that Spicelo is GPOC’s guarantor with respect to the debt owed to the Lenders, Spicelo is not the guarantor with respect to the debt owed to Tamarack, and has no obligation to Tamarack. There is nothing which would compel Spicelo to pay the debt owed to Tamarack and there is nothing which would compel GPOC to repay Spicelo if Spicelo paid anything to satisfy Tamarack. In short, the relationship between GPOC and Spicelo that is necessary to support marshalling does not exist here.

[46] Further, because there are insufficient assets within the SISF to satisfy even the debt to Tamarack, directing marshalling in this case would be inequitable to Spicelo as it would not be able to recoup as against GPOC, and would cause Spicelo to become liable for GPOC’s debt to Tamarack – a debt that it has no involvement in. Marshalling is not appropriate in these circumstances.

[47] Given my conclusion that marshalling does not apply in this case, I need not determine whether Spicelo would become subrogated to the Lenders' right of recovery as against GPOC and the assets under the SISP.

IV. Conclusion

[48] The Griffon Entities' application is therefore granted. Specifically, Tamarack has no claim against the assets of Spicelo and the Lenders are not required to exhaust their remedies pursuant to the Spicelo Guarantee prior to realizing on the proceeds from the SISP.

[49] If the parties cannot agree on costs, then they may provide written submissions to me on that issue within 60 days.

Heard on the 12th day of April, 2024.

Dated at the City of Calgary, Alberta this 14th day of May, 2024.

A handwritten signature in black ink, appearing to be 'L.K. Harris', written over a horizontal line.

L.K. Harris
J.C.K.B.A.

Appearances:

Randal Van de Mosselaer and Julie Treleaven
Osler, Hoskin & Harcourt LLP
for the Applicants

Kyle Kashuba
Torys LLP
For the Monitor (Alvarez & Marsal Canada Inc.)

Karen Fellowes, K.C. and Natasha Doelman
Stikeman Elliott LLP
For the Primary Lenders (Trafigura Canada Limited and Signal Alpha C4 Limited)

Matti Lemmens and Jakub Maslowski
Stikeman Elliott LLP
for the 2nd Lien Creditor (Tamarack Valley Energy)

Clerk's Stamp

COURT FILE NUMBER 2401-01422

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 amendedAND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF GRIFFON PARTNERS HOLDING
CORPORATION, GRIFFON PARTNERS CAPITAL
MANAGEMENT LTD., STELLION LIMITED, 2437801
ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA
LTD., and SPICELO LIMITEDDOCUMENT **ORDER (Marshalling)**ADDRESS FOR **OSLER, HOSKIN & HARCOURT LLP**SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT
Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2Solicitors: Randal Van de Mosselaer / Julie Treleaven
Telephone: (403) 260-7000 / 7048
Email: RVandemosselaer@osler.com / JTreleaven@osler.com
File Number: 1246361**DATE ON WHICH ORDER WAS PRONOUNCED:** May 14, 2024**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton, Alberta**JUSTICE WHO MADE THIS ORDER:** The Honourable Justice L. K. Harris

UPON the application of Griffon Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited ("**Spicelo**", and together with all of the foregoing collectively referred to herein as the "**Griffon Applicants**") filed March 15, 2024 (the "**Griffon Applicants' Application**"); **AND UPON** the application of Tamarack Valley Energy Ltd. ("**TVE**") filed March 12, 2024 (the "**TVE Application**"); **AND UPON** reading the Affidavit of Daryl Stepanic, sworn September 14, 2023, and filed September 15, 2023 in

Action No. 25-2979735; **AND UPON** reading the Affidavit of Dave Gallagher sworn September 19, 2023 and filed on September 20, 2023 in Action No. 25-2979735; **AND UPON** reading the Affidavit of Daryl Stepanic, sworn January 29, 2024, and filed in this action on January 30, 2024; **AND UPON** reading the Affidavit of Daryl Stepanic, sworn and filed March 15, 2024; **AND UPON** reading the transcript of the questioning of Jonathan William Klesch pursuant to Rule 6.8 dated April, 2, 2024 and filed April 5, 2024; **AND UPON** reading the Second Report of Alvarez & Marsal Canada Inc. dated March 21, 2024 in its capacity as Monitor in these proceedings (the “**Monitor**”); **AND UPON** having read the Approval and Reverse Vesting Order granted in this Action on April 10, 2024; **AND UPON** hearing from counsel for the Griffon Applicants, counsel for TVE, counsel for the Monitor, and counsel to Signal Alpha C4 Limited (“**Signal**”) and Trafigura Canada Ltd. (“**Trafigura**”, and together with Signal, the “**Lenders**”);

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this application is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other person other than those persons served is entitled to service of this application.
2. TVE has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling or otherwise.
3. The Lenders are not required, pursuant to the doctrine of marshalling or otherwise, to exhaust their remedies under the Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”) granted to the Lenders by Spicelo and the shares pledged to the Lenders by Spicelo (the “**Pledged Shares**”) pursuant to the Spicelo Guarantee prior to the Lenders realizing upon any of proceeds from the SISF (as that term is defined in the February 7, 2024 Amended and Restated Initial Order in these proceedings).
4. The Griffon Applicants’ Application is hereby granted with the exception of paragraph 1(d) thereof. Paragraph 1(c) of the TVE Application is hereby dismissed.
5. No Order is made in respect of the subrogation issues raised in paragraph 1(d) of the Griffon Applicants’ Application or paragraph 1(d) of the TVE Application.

6. If the parties cannot agree on costs, they have leave to speak to costs by providing written submissions on costs to this Court within 60 days.
7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

APPROVED AS TO FORM AND CONTENT:

STIKEMAN ELLIOTT LLP

Per: Matti Lemmens

Pratt, Elena

From: Matti Lemmens <MLemmens@stikeman.com>
Sent: Friday, May 24, 2024 1:29 PM
To: Van de Mosselaer, Randal
Cc: Karen Fellowes; Kashuba, Kyle; okonowalchuk@alvarezandmarsal.com; dmacrae@alvarezandmarsal.com; Treleaven, Julie; Jakub Maslowski; Kira Lyseng
Subject: RE: GPOC/Tamarack - Marshalling

Randal,

With respect to the affidavit, you are correct that we intended to refer to the affidavit of Dave Gallagher dated September 19, 2023. Thanks.

We otherwise disagree about the terms of the form of order being proposed and have advised of our position.

I am unsure of what dates are available with the Court of Appeal at this time. I have asked my office if we can schedule it for June 4, but I am unsure if that is available. Are you available on that date? If it is a date that does not work for counsel, we can work to get it scheduled for a mutually available date.

Matti

Matti Lemmens
Partner

Direct: +1 403 266 9064
 Email: mlemmens@stikeman.com

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: Friday, May 24, 2024 1:24 PM
To: Matti Lemmens <MLemmens@stikeman.com>
Cc: Karen Fellowes <KFellowes@stikeman.com>; Kashuba, Kyle <kkashuba@torys.com>; okonowalchuk@alvarezandmarsal.com; dmacrae@alvarezandmarsal.com; Treleaven, Julie <jtreleaven@osler.com>; Jakub Maslowski <jmaslowski@stikeman.com>; Kira Lyseng <KLyseng@stikeman.com>
Subject: RE: GPOC/Tamarack - Marshalling

Matti,

We haven't had a reply to our email below yet. Please advise, failing which I will write to Justice Harris's office as noted below.

Please also advise what date you are looking to book for your application for leave to appeal so that I can ensure that I am available on that date.

Regards,

OSLER

Randal Van de Mosselaer
 Partner
 403.260.7060 | rvandemosselaer@osler.com
 Osler, Hoskin & Harcourt LLP | osler.com

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: Monday, May 20, 2024 9:42 PM
To: Matti Lemmens <MLemmens@stikeman.com>

Cc: Karen Fellowes <KFellowes@stikeman.com>; Kashuba, Kyle <kkashuba@torys.com>;
okonowalchuk@alvarezandmarsal.com; dmacrae@alvarezandmarsal.com; Treleaven, Julie <jtreleaven@osler.com>; Jakub
Maslowski <maslowski@stikeman.com>; Kira Lyseng <KLyseng@stikeman.com>
Subject: RE: GPOC/Tamarack - Marshalling

110

Matti,

Thanks for your email.

We have no difficulty referencing Mr. Gallagher's affidavit in the preamble, except that we presume you meant his September 19, 2023 affidavit rather than his September 14, 2023 affidavit – because there is no September 14, 2023 affidavit. Please advise. On the assumption that you meant to reference the September 19, 2023 affidavit we have incorporated that into the preamble in the attached.

With respect to your second point, I am afraid we cannot agree. The substance of Tamarack's application was dealt with in paragraphs 47 and 48 of Justice Harris's Reasons for Decision, and in fact the language which she used in the second sentence of paragraph 48 tracks the language in paragraph 1(c) of Tamarack's application. There can be no doubt that Tamarack's application was decided and dismissed, and the fact that Tamarack's application was not mentioned in the Reasons is an obvious oversight.

Accordingly, unless you are prepared to agree with the language in paragraphs 4 and 5 of the attached, we will contact Justice Harris's office and find out when she has some time available when we can speak to this issue and have the terms of the Order settled.

Please advise at your earliest convenience. Unless we hear from you on this point by the end of this week we intend to make those arrangements with Justice Harris's office by providing her with both Applications, her Reasons for Decision, and our proposed form of Order so that this matter may be concluded.

Regards,

OSLER

Randal Van de Mosselaer
Partner
403.260.7060 | rvandemosselaer@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Matti Lemmens <MLemmens@stikeman.com>
Sent: Monday, May 20, 2024 8:16 AM
To: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Cc: Karen Fellowes <KFellowes@stikeman.com>; Kashuba, Kyle <kkashuba@torys.com>;
okonowalchuk@alvarezandmarsal.com; dmacrae@alvarezandmarsal.com; Treleaven, Julie <jtreleaven@osler.com>; Jakub
Maslowski <maslowski@stikeman.com>; Kira Lyseng <KLyseng@stikeman.com>
Subject: Re: GPOC/Tamarack - Marshalling

Hi Randal,

We also referred the Court to the Affidavit of Dave Gallagher sworn September 14, 2023, which should be added to the Preamble.

The decision did not reference Tamarack's application, so all references to it should be removed from the Order.

Thank you,

From: Van de Mosselaer, Randal <rvandemosselaer@osler.com>
Sent: Wednesday, May 15, 2024 9:11:33 PM
To: Matti Lemmens <MLemmens@stikeman.com>
Cc: Karen Fellowes <KFellowes@stikeman.com>; Kashuba, Kyle <kkashuba@torys.com>;
okonowalchuk@alvarezandmarsal.com <okonowalchuk@alvarezandmarsal.com>; dmacrae@alvarezandmarsal.com
<dmacrae@alvarezandmarsal.com>; Treleaven, Julie <jtreleaven@osler.com>
Subject: GPOC/Tamarack - Marshalling

Matti,

Further to the decision of Justice Harris released yesterday (copy attached for ease of reference) we have prepared a form of Order arising out of that decision, a copy of which is attached.

Please let me know if you have any comments on this form of Order, failing which please endorse this Order on the signature line on p.2 and return to us so that we might have the Order signed and filed.

We are currently considering our position on costs and will be in touch in due course on that point.

Regards,

OSLER

Randal Van de Mosselaer

403.260.7060 DIRECT
403.260.7024 FACSIMILE
rvandemosselaer@osler.com

Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, Alberta, Canada T2P 1N2
403.260.7000 main
403.260.7024 facsimile

osler.com

Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

4200 Bankers Hall West, 888 - 3rd Street S.W., Calgary, AB T2P 5C5 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.



Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

4200 Bankers Hall West, 888 - 3rd Street S.W., Calgary, AB T2P 5C5 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

This is **Exhibit "G"** to the Affidavit of Elena Pratt

sworn before me this 5th day of June 2024.

A handwritten signature in blue ink, appearing to read 'Alyssa Roy', is written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

Stikeman Elliott

Matti Lemmens
Direct: (403) 266 9064
mlemmens@stikeman.com

Stikeman Elliott LLP
Barristers & Solicitors
4200 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB T2P 5C5 Canada

Main: 403 266 9000
Fax: 403 266 9034
www.stikeman.com

May 29, 2024
File No.: 136603.1015

BY EMAIL (elise.russell@albertacourts.ca)

Alberta Court of King's Bench
1A Sir Winston Churchill Square
Edmonton Law Courts Building
Edmonton, AB T5J 0R2
Attention: The Honourable Justice L.K. Harris

Justice Harris:

Re: In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended,

And in the Matter of the Compromise or Arrangement of Griffon Partners Operation Corporation, Griffon Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited (collectively, the "Debtors")

Court of King's Bench File No. 2401-01422

We write as counsel to Tamarack Valley Energy Ltd. ("**TVE**") in the above-noted matter, and further to the letter from Mr. Van de Mosselaer, counsel for the Debtors, dated May 27, 2024.

Respectfully, TVE has filed an application with the Alberta Court of Appeal (Court of Appeal File No. 2401-0142AC) for permission to appeal Your Ladyship's Reasons for Decision dated May 14, 2024 (the "**May 14 Decision**") which is scheduled to be heard by the Honourable Justice A.D. Grosse on June 13, 2024, a copy of which is attached for Your Ladyship's reference.

One of the grounds upon which TVE is seeking permission to appeal the May 14 Decision is that it did not reference TVE's application on the issues of marshalling and subrogation filed on March 12, 2024 (the "**TVE Application**"). As TVE's application for permission to appeal is extant, TVE respectfully submits that it would be inappropriate to issue any corrigendum to the May 14 Decision or to include the TVE Application in the form of Order in these circumstances, as TVE takes the position that this is an appealable issue.

Should Your Ladyship have any questions or would like to hear from the parties orally or in writing regarding the foregoing or the form of Order arising from the May 14, Decision, please do not hesitate contacting the undersigned.

Yours truly,


STIKEMAN ELLIOTT LLP



Matti Lemmens
Partner
Encl.

cc Osler, Hoskin & Harcourt LLP, Attn: Randal Van de Mosselaer / Julie Treleaven
Torys LLP, Attn: Kyle Kashuba
Stikeman Elliott LLP, Attn: Karen Fellowes, KC / Natasha Doelman
Stikeman Elliott LLP, Attn: Jakub Maslowski

This is **Exhibit "H"** to the Affidavit of Elena Pratt
sworn before me this 5th day of June 2024.



Notary Public/Commissioner for Oaths in and for Alberta

ALYSSA NICOLE ROY
A Commissioner for Oaths in and for Alberta
My Commission Expires: June 2, 2027

From: Elise Russell <Elise.Russell@albertacourts.ca>
Sent: Thursday, May 30, 2024 9:35 AM
To: Jakub Maslowski
Cc: Van de Mosselaer, Randal; Treleaven, Julie; Kashuba, Kyle; Karen Fellowes; Natasha Doelman; Matti Lemmens; Kira Lyseng
Subject: RE: In the matter of Griffon Partners Operation Corporation et al // Alberta Court of King's Bench Action No. 2401-01422

Sent on behalf of Justice Harris:

"I have received the correspondence from Mr. Van de Mosselaer and Ms. Lemmens. Given that Ms. Lemmons client has filed an Application for Permission to Appeal, I will await the Court of Appeal decision on that Application before taking any further steps."

Regards,



Elise Russell
Bilingual Judicial Assistant to
Justice A. Loparco
Justice S. Leonard
Justice S. Hillier
Justice L. Harris
Justice J. Martin and
Justice K. Becker Brookes

E: elise.russell@albertacourts.ca

Court of King's Bench of Alberta
6th Floor, Law Courts
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2
