

COURT FILE NUMBER 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 ALBERT A LTD., 2437799 ALBERT A
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

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File No.: 136603.1015



NB

C31659

COM March 25, 2024

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 25, 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:
 - a. Compelling Jonathan Klesch to attend Questioning virtually at 9:00 AM on April 2, 2024 for questioning in relation to the applications regarding the doctrines of marshalling and subrogation filed by TVE on March 12, 2024 (the “**TVE Application**”) and by Griffon Partners Operation Corporation (“**GPOC**”), Griffon Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited (“**Spicelo**”) (collectively, the “**Debtors**”) on March 15, 2024 (the “**Debtors’ Application**”, and together with the TVE Application, the “**Marshalling Applications**”);
 - b. abridging the time for service of notice of this Application, 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;
 - c. 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;
 - d. adjourning the hearing of the Marshalling Applications until such time that TVE has examined Klesch for Questioning pursuant to Rule 6.8 of the Alberta *Rules of Court* and he has responded to any undertakings;
 - e. such further and other relief as this Honourable Court may deem just and appropriate having regard to all of the circumstances.

Grounds for making this application:

2. TVE is a secured creditor of the debtor GPOC and is an interested party in the within proceedings before this Honorable Court under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36.
3. Mr. Klesch is a director and beneficial shareholder of GPOC, and is the sole beneficial shareholder of Spicelo, which is also a debtor party to the *CCAA Proceedings*.
4. GPOC is a corporation duly registered in the Province of Alberta. Spicelo is a corporation incorporated under the laws of Cyprus and extra-provincially registered in Alberta.

5. On March 12, 2024, TVE filed the TVE Application returnable on March 26, 2024 before this Honourable Court seeking, *inter alia*:
 - (a) an order directing that pursuant to the doctrine of marshalling, GPOC's senior secured creditors, Trafigura Canada Limited and Signal Alpha C4 Limited (collectively, the "**Lenders**"), must first realize upon certain shares pledged by Spicelo in satisfaction of debts owing by GPOC in priority to any proceeds from the sale of GPOC's assets through a sale and investment solicitation process in the *CCAA Proceedings*; and
 - (b) a declaration that Spicelo is not entitled to subrogate to the Lenders' security position as against GPOC in priority to TVE.
6. On March 15, 2024, the Debtors filed the Debtors' Application, which also is in relation to the applicability of the doctrines of marshalling and subrogation, returnable on March 25, 2024 before this Honourable Court.
7. Mr. Klesch is a necessary and proper party to be examined in the TVE Application due to his role as director and beneficial shareholder of GPOC and sole beneficial shareholder of Spicelo. Specifically, Mr. Klesch has knowledge of and was directly involved in the negotiation and attempted renegotiation of the loan documents with TVE and the Lenders which are at issue in the within *CCAA Proceedings*, and is the only person who is able to speak directly to the operations and assets of Spicelo. To date, Mr. Klesch has not sworn any affidavits in the *CCAA Proceedings* or in the prior proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
8. On March 8, 2024, TVE first provided notice of its intention to examine Mr. Klesch pursuant to Rule 6.8 of the Alberta *Rules of Court*, Alta Reg 124/2010, to counsel for the Debtors. Counsel advised that he was instructed not to accept service on behalf of Mr. Klesch.
9. On March 12, 2024, TVE sent a Notice of Appointment for Questioning under Rule 6.8 to Mr. Klesch and Debtors' counsel via email, and by courier along with conduct money to the offices of Greenfire Resources Inc. where Mr. Klesch is listed as a director (the "**First Notice of Appointment**"). The First Notice of Appointment scheduled Mr. Klesch's questioning to be conducted virtually on March 18, 2024.
10. On March 14, 2024, TVE obtained an Order for Service *Ex Juris* and Substitutional Service (the "Service Order") to allow for TVE to serve the First Notice of Appointment and any other documents on Mr. Klesch via email and by courier to his address in London, United Kingdom.

11. On that date, TVE served the Service Order and the First Notice of Appointment on Mr. Klesch and Debtors' counsel via email, and on March 15, 2024, arranged to have same couriered to Mr. Klesch's London address along with conduct money.
12. On March 17, 2024, Mr. Klesch emailed counsel for TVE confirming he had received the First Notice of Appointment and advising he would not be attending questioning on March 18, 2024.
13. Mr. Klesch did not attend his questioning on March 18, 2024 as required under the First Notice of Appointment.
14. On March 18, 2024, TVE sent a letter to this Honourable Court advising that it required to examine Mr. Klesch in order to fully argue its position in the Marshalling Application, requested an extension to file its materials for said applications, and advised that it may need to adjourn the Marshalling Applications in the event Mr. Klesch did not attend questioning. In response, this Honourable Court granted leave for TVE to file Mr. Klesch's transcripts on March 21, 2024.
15. On March 18, 2024, TVE served an Amended Notice of Appointment for Questioning (the "**Amended Notice of Appointment**") to examine Mr. Klesch on March 21, 2024 on Mr. Klesch in accordance with the Service Order, and on Debtors' counsel.
16. Mr. Klesch did not attend his questioning on March 21, 2024 as required under the Amended Notice of Appointment.
17. As a result of Mr. Klesch's non-attendance at questioning, TVE was unable to file his transcripts on March 21, 2024.
18. TVE submits that it is entitled to examine Mr. Klesch in advance of the hearing of the Marshalling Applications, as he is a necessary and proper witness in respect of same and the within CCAA *Proceedings*, and his evidence is required for TVE to fully and fairly argue the Marshalling Applications, and respectfully requests that this Honourable Court:
 - (a) Compel Mr. Klesch attend for questioning under Rule 6.8 of the Alberta *Rules of Court* on April 2, 2024 to be conducted virtually;
 - (b) Abridge the time for service of this Application and deem service of same to be good and sufficient;
 - (c) Abridge the time for service of any Notices of Appointment for Questioning under Rule 6.8 of the Alberta *Rules of Court*; and

- (d) Adjourn the Marshalling Applications until such time that TVE has examined Klesch for Questioning pursuant to Rule 6.8 of the Alberta *Rules of Court* and he has responded to any undertakings

Material or evidence to be relied on:

19. The Pleadings in this Action;
20. The pleadings filed in Court of King's Bench File Numbers 25-2979735 and B201-979735;
21. Affidavit of Kira Lyseng, sworn on March 13, 2024;
22. Affidavit of Kira Lyseng, sworn on March 21, 2024;
23. Affidavit of Mark Sewell, sworn on March 18, 2024;
24. Affidavit of Mark Sewell, sworn on March 20, 2024;
25. Affidavit of Daryl Stepanic, sworn January 29, 2024;
26. Affidavit of David Gallagher, sworn on September 19, 2023;
27. Such further and other materials as Counsel may advise and this Honourable Court may permit.

Applicable rules:

28. Rules 1.3, 1.4, 6.8, 6.16 – 6.20, 6.38 and 13.5 of the Alberta *Rules of Court*.

Applicable Acts and regulations:

29. *Rules of Court*, Alta Reg 124/2010, as amended.

Any irregularity complained of or objection relied on:

30. n/a.

How the application is proposed to be heard or considered:

31. In Person.

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.