

COURT OF APPEAL OF ALBERTA

FORM AP-3

[RULE 14.53]

COURT OF APPEAL FILE
NUMBER:

2101-0004AC

TRIAL COURT FILE
NUMBER:

25-2679073

REGISTRY OFFICE:

CALGARY

APPLICANTS:

BEHROKH AZARIAN, HOMAYOUN HODAIE, MANDANA REZAIE, MEHRAN POOLADI-DARVISH, MEYSAM OVAICI, FIROOZ ABBASZADEH, MEHRAN JOOZDANI, LAYLA AMJADI, MEER TAHER SHABANI-RAD, ZAHRA AHMADI-NAGHDEHI, AFSHIN SHAMELI, MARYAM MOHSEN ZADEH, PARHAM MINOO, HALEH PEIRAVI, MOHAMMAD AHADZADEH ARDEBILI, RAMIN JALALPOOR, ELHAM VAKILI AZGHANDI, TARIQ MAHMOOD ROSHAN, AMIN JALALPOOR, FAISAL KHAN, POONAM DHARMANI AND ALI NILFOROUSH

STATUS ON APPEAL:

Appellants

STATUS ON APPLICATION:

Respondents

RESPONDENTS:

GREENFIRE OIL & GAS LTD. AND GREENFIRE HANGINGSTONE OPERATING CORPORATION

STATUS ON APPEAL:

Respondents

STATUS ON APPLICATION:

Applicant

NON-PARTY:

ALVAREZ & MARSAL CANADA INC. IN ITS CAPACITY AS PROPOSAL TRUSTEE OF GREENFIRE OIL & GAS LTD. AND GREENFIRE HANINGSTONE OPERATING CORPORATION

STATUS ON APPEAL:

Respondent

DOCUMENT

APPLICATION FOR PERMISSION TO APPEAL

ADDRESS FOR SERVICE AND
CONTACT INFORMATION
OF PARTY FILING THIS

Field LLP
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Calgary, AB T2P 0X8
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File No. 72185-1



CONTACT INFORMATION FOR ALL OTHER PARTIES:

<p>Burnet, Duckworth & Palmer LLP 2400, 525 – 8th Avenue SW Calgary, AB T2P 1G1</p> <p>Attention: David LeGeyt / Ryan Algar</p> <p>Email: dlegeyt@bdplaw.com / ralgar@bdplaw.com</p> <p>Counsel for Greenfire Oil and Gas Ltd. and Greenfire Hangingstone Operating Corporation</p>	<p>Alvarez & Marsal Canada Inc. 1110, 250 6th Avenue SW Calgary, AB T2P 3H7</p> <p>Attention: Orest Konowalchuk / Duncan MacRae</p> <p>Email: okonowalchuk@alvarezandmarsal.com / dmacrae@alvarezandmarsal.com</p> <p>Proposal Trustee</p>
<p>McMillan LLP TD Canada Trust Tower, Suite 1700 421 7th Avenue S.W. Calgary, AB T2P 4K9 Attention: Adam Maerov / Kourtney Rylands</p> <p>Email: Adam.Maerov@mcmillan.ca / Kourtney.Rylands@mcmillan.ca</p> <p>Counsel to Proposal Trustee, Alvarez & Marsal Canada Inc.</p>	

And to the Service List

WARNING:

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT(S):

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: January 20, 2020, or such further date as determined by the Court of Appeal

Time: 9:30 a.m.

Where: Via Webex: Court of Appeal, 2600, 450 – 1st St. SW Calgary AB

Before: Single Judge of the Court (Rule 14.37)

Nature of Application and Relief Sought:

1. The Applicants, Behrokh Azarian, Homayoun Hodaie, Mandana Rezaie, Mehran Pooladi-Darvish, Meysam Ovaici, Firooz Abbaszadeh, Mehran Joozdani, Layla Amjadi, Meer Taher Shabani-Rad, Zahra Ahmadi-Naghdehi, Afshin Shameli, Maryam Mohsen Zadeh, Parham Minoo, Haleh Peiravi, Mohammad Ahadzadeh Ardebili, Ramin Jalalpoor, Elham Vakili Azghandi, Tariq Mahmood Roshan, Amin Jalalpoor, Faisal Khan, Poonam Dharmani and Ali Nilforoush (collectively referred to as the "**Investors**" and/or the "**Investor Group**"), state that they have the right to appeal pursuant to ss. 193(a) and 193(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [**BIA**]. A Civil Notice of Appeal has accordingly been filed concurrently with this Application to Preserve Time.
2. In the alternative, the Investor Group seeks leave to appeal pursuant to s. 193(e) of the BIA. The Investor Group appeal the orders of Justice Nixon (the "**Application Judge**") approving interim financing pursuant to s. 50.6 of the BIA (the "**Interim Financing Order**") and the sale of operating assets pursuant to s. 65.13 of the BIA (the "**Sale Approval and Vesting Order**" or "**SAVO**").
3. The Investor Group further seeks an order permitting the use of further evidence in the form of the Affidavit of Meer Taher Shabani-Rad, setting forth the particular terms of Interim Financing offered by the Investor Group.
4. The Investor Group also seeks an Order:
 - (a) abridging the time for service of this Application, deeming service to be good and sufficient, and such other related relief as may be required;

- (b) adjourning this Application to a fixed date to allow counsel to file memoranda, further evidence, if any, and to arrange the hearing of the merits of this Application;

Grounds for making this application:

5. The Investor Group is a group of individuals who have advanced significant personal funds on the representation and promise of Greenfire Oil & Gas Ltd. and Greenfire Hangingstone Operating Corporation (“**Greenfire**”) and its officers that the advances were a short term bridge loan, that debentures would be issued in support thereof, the funds would be repaid shortly upon new financing being obtained, that security would be granted upon new financing being obtained, and that the new financing had funds specifically earmarked and set aside for that purpose. None of the representations and promises were true.
6. On October 8, 2020, Greenfire filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the *BIA*. During the currency of the NOI proceedings, Greenfire pursued financing from potential lenders. During the NOI proceedings, Greenfire applied to extend its time to submit a proposal to its creditors a total of four times between November 4, 2020 and December 11, 2020. Most of these applications were accompanied by an application to approve interim financing or a sale of the operating assets but those applications were all withdrawn until the hearing on December 14, 2020.
7. In the December 11 application, which was heard December 14 and 17, 2020, Greenfire made an application for approval of the SAVO and Interim Financing Order (collectively, the “**Orders**”), both of which were granted by the Application Judge.
8. The Application Judge erred in law in granting the Orders for the following reasons:
 - (a) He incorrectly applied the tests and factors set out in sections 50.6 and 65.13 of the *BIA* to grant the Interim Financing Order and the SAVO;
 - (b) He incorrectly held that the factual circumstances allowed him to amend or ignore the principles set out in the case of *Royal Bank of Canada v. Soundair Bank of Canada v. Soundair*, [1991] CanLII 2727 (ON CA) for approving the SAVO; and

- (c) Justice Nixon approved interim financing for use by the Purchaser to purchase the operating assets of Greenfire;
9. The Application Judge made palpable and overriding errors including by:
 - (a) drawing legal conclusions based on facts that were not in evidence before him;
 - (b) giving too much weight to untested evidence in the face of contradictory evidence provided by the creditors, and failing to consider such contradictory evidence;
 - (c) making incorrect and unwarranted inferences from the facts that were in evidence before him; and
 - (d) making incorrect and unwarranted inferences regarding the position of certain parties that was not on the record before him.
 10. The appeal falls under s. 193(a) and (c) of the BIA and therefore may be brought as of right.
 11. Alternatively, the points of the proposed appeal are of significance to the bankruptcy practice, the appeal is of significance to this action, the appeal is *prima facie* meritorious and is not frivolous and the Orders appear to be contrary to the law and involve palpable and overriding errors that cause prejudice to Greenfire's creditors. The appeal will not unduly delay the proceedings below.
 12. The Affidavit of Meer Taher Shabani-Rad sworn December 28, 2020 contains an Interim Financing Term Sheet which sets forth the terms of financing offered by the Applicants. This Term Sheet was not available at the time of the Application below, has relevance to the appeal, is credible and could have affected the result below.
 13. The Applicants rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

14. The transcripts from the hearing held December 14 and 17, 2020;

15. The Affidavit of Meer Taher Shabani Rad sworn December 28, 2020;
16. The application materials that were before the Honourable Justice Nixon on December 17, 2020, including but not limited to:
 - (a) The Application of Greenfire, filed November 9, 2020.
 - (b) The Brief of Greenfire, filed November 9, 2020.
 - (c) The Brief of Greenfire dated December 3, 2020.
 - (d) The Affidavit of Meer Taher Shabani-Rad, sworn October 14, 2020.
 - (e) The Supplemental Affidavit of Meer Taher Shabani-Rad sworn December 9, 2020.
 - (f) The further Supplemental Affidavit of Meer Taher Shabani-Rad sworn December 14, 2020.
 - (g) The further Supplemental Affidavit of Meer Taher Shabani-Rad sworn December 17, 2020.
 - (h) The Affidavit of Robert Logan sworn October 9, 2020.
 - (i) The Affidavit of Robert Logan sworn December 2, 2020.
 - (j) The Affidavit of Robert Logan sworn December 11, 2020.
 - (k) The Affidavit of Todd Pruden sworn December 14, 2020.
 - (l) The Affidavit of Todd Pruden sworn December 17, 2020.
 - (m) The Fourth Report of the Proposal Trustee dated December 5, 2020.
 - (n) The Fifth Report of the Proposal Trustee dated December 11, 2020.
 - (o) Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and rules:

17. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, including but not limited to ss. 50.6, 65.13 and 193;
18. The Bankruptcy and Insolvency General Rules, CRC 1978, c 368, rules 31 and 32;
19. The Alberta *Rules of Court*, AR 124/2010.
20. Such further and other Rules and Legislation as counsel may advise and this Honourable Court may permit.

ANY IRREGULARITY COMPLAINED OF:

21. None.

HOW THE APPLICATION IS PROPOSED TO BE HEARD:

22. Via Webex, as booked with the Court of Appeal.

WARNING

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