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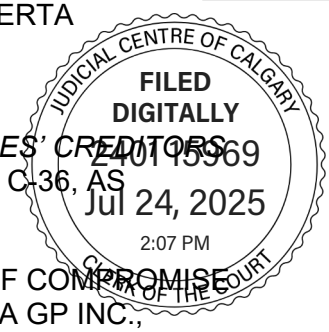

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LCC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC. and A2A CAPITAL SERVICES CANADA INC.

DOCUMENT	**BENCH BRIEF OF MEAFORD A2A DEVELOPMENT INC., LAKE HURON A2A DEVELOPMENT INC., and WINGHAM CREEK A2A DEVELOPMENT INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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BENCH BRIEF OF THE MEAFORD A2A DEVELOPMENT INC., LAKE HURON A2A DEVELOPMENT INC., and WINGHAM CREEK A2A DEVELOPMENT INC.
COMMERCIAL LIST APPLICATION
TO BE HEARD JULY 29, 2025 AT 2:00 PM

MILES DAVISON LLP
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TABLE OF AUTHORITIES

I. INTRODUCTION

1. Meaford A2A Development Inc. (**"Meaford"**), Lake Huron A2A Development Inc. (**"Lake Huron"**), and Wingham Creek A2A Developments Inc. (**"Wingham"**) (collectively, the **"Additional Project Entities"**) are opposing the Monitor's Application to add them as debtors under CCAA proceedings.

2. Each of the Additional Project Entities owns a small fractional interest in development land that is identified in the Monitor's 7th Report as well as the Affidavit of Allan Lind sworn July 24, 2025 (the **"July 2025 Lind Affidavit"**). These respective lands will be referred to herein as the **"Meaford Lands"**, the **"Lake Huron Lands"**, and the **"Wingham Lands".**

3. The existing CCAA proceedings were commenced by a different group of investors in relation to different Lands/projects. The projects that are currently the subject of these CCAA proceedings can be roughly defined as the Angus Manor Park (**"AMP"**) project, and the Fossil Creek and Windridge projects.

4. There are outstanding appeals, scheduled to be heard September 8, 2025, with respect to the Windridge and Fossil Creek project entities.

5. The Additional Project Entities take the position that:

    a. expansion of these proceedings to new projects and companies is inappropriate and beyond the scope of the Monitor's authority. Such expansion will not further the purpose of the existing CCAA proceedings and imposes a remedy that has not been sought by co-owners/investors in the Additional Project Entities.

    b. In any event, such a remedy is inappropriate as the Additional Project Entities are not insolvent, and there are other, less extraordinary remedies available to the investors in the Additional Project Entities.

6. With respect to Meaford in particular, the appointment of a Monitor will jeopardize a sale to an arm's length party that resulted from thorough and diligent marketing by highly experienced commercial realtors at Royal LePage. The sale in question was voted on and approved by the co-owners of the Meaford Lands: See the *Affidavit of Neil Warshafsky sworn July 22, 2025* (the **"Warshafsky Affidavit"**) *and the July 2025 Lind Affidavit, paras. 43-46*).

7. The alternative position of the Additional Project Entities is that any Order granted should limit the powers of the Monitor to oversee the distribution of funds, which would mitigate concerns about interference with the sale of the Meaford Lands and ongoing sales processes.

8. In addition to opposing the relief generally, the Additional Project Entities also object to the Monitor's request to have the entirety of the Meaford Lands, Lake Huron Lands, and Wingham Lands defined as "Property" of the debtor companies and therefore subject to charges. As explained in the July 2025 Lind Affidavit, the Additional Project Entities are only co-owners in the respective lands. The CCAA does not authorize the Court to grant charges over the property of third parties (namely the other co-owners). Justice Simard previously dismissed the Monitor's application to charge the UFIs of other co-owners in the AMP, Windridge, and Fossil Creek lands.

II. FACTS

9. The Additional Companies agree with most of the background and facts set out in the Monitor's Brief. However, there are additional facts that are relevant that add proper context, and the Additional Companies also wish to clarify or correct certain statements.

10. In the Monitor's Brief, it is suggested that the various companies form "part of a larger corporate structure". While this may be true in a broad sense, it is important to note that the Additional Project Entities are distinct, project-specific entities. They have no ownership or financial interest nor any role or involvement in the Angus, Fossil Creek, or Windridge projects and vice versa: *July 2025 Lind Affidavit,* pa.16.

11. The structure of the Additional Project Entities' projects is described in the July 2025 Lind Affidavit – primarily at paras. 23-28 which relate to Meaford, but the basic structure is the same for each of the 3 projects.

12. In summary, the Additional Project Entities sold off undivided fractional interests (**"UFIs"**) of the respective lands to overseas investors. The effect of these sales was that these investors became co-owners in the Meaford Lands, Lake Huron Lands, and Wingham Lands. The titles to the respective lands properly reflect the co-ownership (see titles at Exhibits "B", "M", and "Q" of the July 2025 Lind Affidavit).

13. On this basis, it is important to recognize that Meaford, Lake Huron, and Wingham do not "own" the respective Lands or projects. Rather, they are one of many co-owners, and each of the Additional Project Entities have only a small fractional interest in the Lands. More particularly[1]:

    a. Meaford holds 2.1% of the UFIs in the Meadford Lands
    b. Lake Huron holds 0.15% of the UFIs in the Lake Huron Lands.
    c. Wingham holds 1.74% of the UFIs in the Wingham Lands.

[1] See July 2025 Lind Affidavit, paras. 24, 61, and 83.

14. The main role of each of the Additional Project Entities is as "Facilitator" under the terms of a "Trust Deed" that governs the relationship between co-owners[2]. The Trust Deed for Meaford can be found at Exhibit "C" to the July 2025 Lind Affidavit (it is p.35 of the .pdf, and bookmarked in the electronic version at Exhibit "C(1)". The Trust deeds are substantially identical for Lake Huron and Wingham.

15. The Facilitator's role is to carry out the direction and instructions of the co-owners (clause 2), and it is empowered to take certain actions to develop the Lands on behalf of the collective (clause 3). To accomplish this development, a certain portion from each UFI sale is directed to a "concept planning fund" (**"CPF"**) (clause 3.01(a)).

16. Certain actions or steps by the Facilitator require express co-owner approval. For instance, sale of the Lands requires a special resolution of co-owners (clause 15).

17. In light of the Trust Deed and the role of the Facilitator, the Additional Project Entities dispute the suggestion set out at pa.21 of the Monitor's Brief that the structure and fractional nature of the title renders "marketing and sale of the Additional Project Lands impractical." Indeed, as touched on in the introduction, the Meaford Lands are already subject to a conditional sale that was duly approved by co-owners.

18. It should also be noted that the structure of the projects under the Additional Project Entities is quite different from the AMP, Fossil Creek, and Windridge projects. The structure of those projects is more complicated and described in greater detail in the Affidavits of Allan Lind and Grayson Ambrose sworn December 13, 2024. In short:

    a. The AMP, Windridge, and Fossil Creek projects involved both Canadian and offshore investors. The offshore investors purchased their UFIs directly, whereas the Canadian investors purchased trust units and/or bonds pursuant to Offering Memorandums (**"OMs"**).

    b. For AMP, the structure was particularly complicated, with investors entering at different times through 2 separate OMs:

        i. Under the first OM, Canadian investors purchased units in a limited partnership, and the limited partnership in turn purchased UFIs from Angus Manor Park A2A Developments Inc.

        ii. Under the second OM, Canadian investors were issued bonds by a company called Angus Manor Park A2A Capital Corp., which used the proceeds from the

[2] Acknowledging however that Wingham was replaced as Facilitator, and has not at this time been reappointed, as discussed in the July 2025 Lind Affidavit at paras. 95 - 98.

bond raise to acquire limited partnership units in a different limited partnership which also purchased UFIs from Angus Manor Park A2A Developments Inc.

c. For Windridge and Fossil Creek, The Canadian investors purchased trust units in respective Canadian trusts (the Fossil Creek A2A Trust and Hills of Windridge A2A Trust), which were in turn the limited partners in respective limited partnerships. Those limited partnerships then purchased UFIs from Texas companies, but then all UFI holders entered into a sales trust agreement to allow a single Trustee to administer the properties.

19. The Additional Project Entities have a simpler structure, involving only offshore investors who directly hold UFIs in their own names.

III. ISSUES

20. The central issue for determination is whether the Court should add Meaford, Lake Huron, and Wingham as debtors under the existing CCAA proceeding, including granting the Monitor the enhanced powers over those companies.

21. Important sub-issues in determining the central question include the following:

    a. Has insolvency been established?

    b. Is the Monitor a proper applicant?

    c. Will adding the Additional Companies as debtors further the purposes of the existing CCAA proceedings?

    d. Is the extraordinary relief sought justified in the circumstances?

IV. LAW AND ARGUMENT

22. The onus is on the Applicant to show that requirements for an Order under the CCAA have been met and that such proceedings are appropriate.

Has Insolvency Been Established?

23. A preliminary issue is whether the Additional Project Entities are insolvent. Insolvency is a pre-requisite for a company to be the subject of a CCAA application. Under s.2 of the CCAA, "debtor company" is defined to mean (among other things):

> **debtor company** means any company that
>
> **(a)** is bankrupt or insolvent,
>
> **(b)** has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts;.
>
> **…**

24. Insolvency is not defined in the CCAA, but resort is frequently had to the insolvency definitions utilized by the *Bankruptcy and Insolvency Act*:

> **insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

25. Aside from intercompany loans, which were in turn loaned to co-owners for the benefit of the projects, the Additional Project Entities have no debts. These intercompany loans are not currently due and are only payable upon sale of the Lands: *July 2025 Lind Affidavit, paras. 31-33, 66-67, and 86-87.*

26. The Monitor relies principally on property taxes being outstanding as evidence of insolvency. While in most cases, this may be one possible indicator that a company is not meeting its current obligations as they come due, this is not the case in the unique circumstances of this case.

27. As the Additional Project Entities are all co-owners, the obligation to pay the property taxes is a collective one. Clause 3.01(d) of the Deed of Covenant reads as follows:

> Subject to specific other contrary directions and instructions of the Co-owners passed by Ordinary Resolution, the Co-owners hereby acknowledge and agree that the Facilitator is authorized at all times for and on behalf of the Co-Owner:
>
> …
>
> (d) To pay at the cost of the Co-owners all realty taxes, fees and other expenses relating to the orderly maintenance and management of the Property **out of the Concept Planning Fund to the extent therein available, provided that nothing therein shall be construed as a guarantee by the Facilitator of the sufficiency of funds to cover all such expenses.**
>
> [emphasis added]

28. Accordingly, the obligation of the Additional Project Entities to cover the property taxes is limited to funds being available in the respective CPFs. As noted, in the July 2025 Lind Affidavit (paras. 39, 73, and 86), those funds are exhausted.

29. Contrary to the Monitor's Report, the Additional Project Entities did pay property taxes up to the point where the CPFs were exhausted: *July 2025 Lind Affidavit, paras. 35, 69, and 88*.

30. The Monitor also points to non-financial obligations, such as filing annual corporate returns, which do not speak to the solvency of the company.

31. In addition, the Monitor attempts to rely on other trivial or simply nonsensical matters to make the case for the Additional Debtor Entities being insolvent. For instance, the Monitor notes in its Brief that "investors report not having received any payments for investments in the Additional Projects." With respect, this demonstrates a fundamental misunderstanding by the Monitor of the rights of investors in these projects. As co-owners, there is no entitlement of any kind to payments until the respective lands sell.

32. Further, the Monitor notes that the Additional Project Entities are not engaged in any material business activities and do not have employees. Simply put, this is not surprising in a land banking play where all evidence points to the Additional Project Entities seeking exits for the co-owners.

33. In all the circumstances, it is submitted that the evidence of insolvency of the Additional Project Entities is insufficient, and the Application ought to be dismissed on this ground alone.

Proper Applicant

34. Unlike for AMP, Fossil Creek, and Windridge, the present Application is not being advanced by co-owners who have a financial investment in the projects. Rather, it is being brought forward by a Monitor that has management control over companies involved in completely separate projects. The Monitor has no standing or authority to speak for co-owners in the Meaford, Lake Huron, or Wingham projects.

35. In its 7th Report, the Monitor suggests (at pa.72) that "It is the respectful view of the Monitor that adding the Wingham, LHS and Meaford projects and the corresponding Additional Project Entities to the CCAA Proceedings is in the best interest of all of the Offshore Investors (and thus stakeholders) *of Wingham, LHS and Meaford*." [emphasis added].

36. The Monitor is effectively advocating on behalf of co-owners in the Meaford, Lake Huron, and Wingham Lands. To the extent the Monitor is purporting to represent or speak for these parties, this is beyond the authority of the Monitor.

37. While the Monitor has filed Affidavits from two co-owners, those co-owners are not the Applicants. Further, they collectively own a mere 0.13% of the Meaford Lands, 0.46% of the Lake Huron Lands, and 0.17% of the Wingham Lands.

38. The Monitor also relies upon pa.39(e) of the ARIO that states:

> Without in any way limiting the powers and duties of the Monitor otherwise set out herein or in the CCAA, the Monitor is hereby empowered and authorized, but not obligated, to do any of the following in the name of and on behalf of the Debtor Companies and the Affiliate Entities, where the Monitor considers it necessary or desirable:
>
> > (e) conduct investigations from time to time, including, without limitation, to determine whether any additional entities should be added to the within proceedings, and to make any application to add a respondent to these CCAA proceeding and amend the style of cause accordingly;

39. However, this paragraph authorizes action by the Monitor "in the name of and on behalf of the Debtor Companies." It does not authorize the Monitor to speak for or bring Applications for the benefit of co-owners in completely separate projects.

40. Furthermore, pa.39(e) must be read in the context of the Order granted. The ARIO was intended to ensure Monitor would have full control over the AMP, Fossil Creek, and Windridge projects. Certainly the Monitor should be permitted to apply to add parties that may have some control or influence over the AMP, Fossil Creek, and Windridge projects, as the Monitor is

tasked with monetizing those projects. However, pa.39(e) should not be interpreted as giving the Monitor free license to add companies involved in completely separate projects that have no functional role in AMP, Fossil Creek, or Windridge.

41. With respect, it is unclear under what capacity the Monitor brings the present Application. The Monitor does note in its Brief that A2A Developments Inc., which is one of the named Debtors in the proceedings, is the parent company of both Angus Manor Park A2A Developments Inc. (which sold and still retains UFIs in the Angus project) and the Additional Project Entities. To the extent that A2A Developments Inc. has the right to seek this relief, the Monitor can essentially step into its shoes for that purpose.

42. That said, it is highly questionable whether a shareholder has standing to initiate an application under the CCAA proceeding. Indeed, whether an equity stakeholder can bring an Application under the CCAA is a live issue in the appeal proceedings set to be heard on September 8, 2025.

43. In his January 2025 decision, Justice Feasby stated (at pa.16):

> The Respondents argued that the Applicants, being equity investors, did not have standing pursuant to the *CCAA* to apply for an Initial Order. Justice Simard dismissed this argument at page 8 saying: "there is no prohibition in the *CCAA* on investors applying for an initial order." He further concluded at page 9 that the "applicant investors are persons interested, as described in Section 11.02(1) of the *Act*; and as a result, I find that the applicant investors had standing to make the initial order application.

44. However, as noted, this proposition forms part of the appeal being pursued by the Windridge and Fossil Creek entities, so the law is not settled on whether a shareholder is entitled to seek CCAA relief for a company. Attached for reference at **TAB 1** is an excerpt from the Factum filed by Bennett Jones on behalf of some of the Appellants in the appeal proceedings which gives some context to this issue.

45. Even if the Monitor has standing through A2A Developments Inc. to bring this Application, it does not have the authority to speak for co-owners in the Additional Project Entities Lands, nor does the Monitor have the right to bring Applications on their behalf.

46. Merely having standing or the mere fact of affiliation does not make it necessary or appropriate to expand the existing CCAA proceedings. As will be discussed in the next section, adding these respondents will be of little or no benefit to the primary stakeholders that initiated these proceedings.

Does Expansion Further the Goals of these CCAA Proceedings?

47. The central purpose behind the initiation of these CCAA proceedings was to protect the interests of investors in the AMP, Windridge, and Fossil Creek projects.

48. It is unclear how meddling in other projects of other companies will maximize returns for Canadian Investors or Offshore Investors in the AMP, Fossil Creek, or Windridge projects.

49. As noted previously, the Additional Project Entities are project-specific companies and have no role of any kind in the AMP, Windridge, or Fossil Creek projects.

50. Furthermore, none of the current Debtor Companies hold any ownership interest in the Meaford Lands, Lake Huron Lands, or Wingham Lands.

51. Given this separation between the projects, it is difficult to appreciate how the monetizing and distribution of the AMP, Windridge, and Fossil Creek projects is aided by taking control of the Additional Project Entities. While the Monitor may view such a takeover as beneficial to the co-owners of the Meaford Lands, Lake Huron Lands, and Wingham Lands, the Monitor does not represent or speak for those co-owners.

52. While A2A Developments Inc. owns 100% of the shares in one of the AMP companies (Angus Manor Park A2A Developments Inc.), it has no actual role in the AMP, Fossil Creek, or Windridge projects. A2A Developments Inc.'s only connection to any of those projects is that it holds shares in one of the AMP companies: *July 2025 Lind Affidavit, paras. 104 – 105*.

53. A2A Developments Inc. does not owe money to any of the companies that hold the investments in the AMP, Windridge, and Fossil Creek projects, nor to the investors and co-owners in those projects: *July 2025 Lind Affidavit, pa.107*. To the extent any money could *theoretically* flow to A2A Developments Inc. as a shareholder of the Additional Project Entities, this does not benefit the stakeholders in the AMP, Fossil Creek, or Windridge projects, as they have no interest or investment in A2A Developments Inc.

54. Further, it appears unlikely that any funds are likely to ever flow from the Additional Project Entities to A2A Developments Inc. It needs to be recognized that the Additional Project Entities have a very minor financial interest in the Meaford, Lake Huron, and Wingham Lands. In particular, and as noted previously:

    a. Meaford holds 2.1% of the UFIs in the Meadford Lands.
    b. Lake Huron holds 0.15% of the UFIs in the Lake Huron Lands.
    c. Wingham holds 1.74% of the UFIs in the Wingham Lands.

55. The substantial costs associated with a Monitor in CCAA proceedings are very likely to exceed any entitlement that the Additional Project Entities would have under a distribution following sale of the Lands.

56. In addition, while the Monitor claims that its appointment will lead to greater recovery, it has not articulated how or why this will be the case. In essence, the Monitor has not proposed any "germ of a plan" as to what the "restructuring" of the Additional Project Entities will look like.

57. As best as can be gleaned, the Monitor's only plan is to seize control of sales processes that are already being properly conducted by experienced realtors with longstanding knowledge of the Additional Project Entities' Lands. There is no evidence that such processes are being carried out imprudently; to the contrary, the Affidavits from the realtors demonstrate the opposite.

58. There is no proposal by the Monitor for steps that it would undertake to increase the value of the relevant Lands or get a better result than what the existing processes have yielded to date.

59. This is particularly problematic with respect to Meaford, where there is a sale in place that is conditional only upon the purchaser waiving its due diligence condition. The appointment of the Monitor at this time may jeopardize this sale: *July 2025 Lind Affidavit, pa.56; Warshafsky Affidavit, paras. 36-37*.

60. The Monitor is critical of the potential administrative costs set aside in the Exit Overview Package that was distributed to co-owners (see Exhibit "F" to the July 2025 Lind Affidavit). There are a number of important points in response to this:

    a. Firstly, the Monitor has misstated the administrative costs, lumping in real estate commissions and conveyancing fees with the post-closing admin/distribution/tax filing costs.

    b. Secondly, Mr. Lind has explained the rationale for these conservative estimates in his July 2025 Affidavit (see paras. 50-51 and 53), and also noted that the title conveyancing costs are likely to be lower given subsequent discussions about how title will be transferred at closing.

    c. Thirdly, the Monitor has given no indication or evidence that it is in a position to close the transaction, effect tax filings for thousands of co-owners, undertake the task of distributing funds to thousands of co-owners, and monitor/potentially enforce the VTB at a lower cost. As Mr. Lind explains in his July 2025 Affidavit, an exit of this nature is an enormous undertaking: *pa.54*.

61. In the Monitor's Brief, it notes some conclusions reached by Justice Feasby about the ability or willingness of the existing Debtor Companies to properly carry out a distribution process. The

Monitor then states that it "stands to reason" that the Additional Project Entities cannot be trusted to monetize the projects in a fair or transparent manner (pa.43). This is a remarkably tenuous conclusion, and is effectively asking the Court to jump to conclusions about different projects and different companies with no real regard to the specific evidence about the Additional Project Entities.

62. As noted, the structure of these projects is simpler; there are no Canadian investors, no bond issuances, and no intermediary trusts or other entities under which investors were conglomerated. The AMP project, in particular, was admittedly a mess, having been drastically undersold and therefore drastically underfunded from the beginning.

63. Evidence of any mismanagement is very thin in the present case, with the Monitor relying largely on minor issues such as outstanding corporate registry returns and vague, hearsay evidence of Mr. Petersen suggesting that a few nameless co-owners "have expressed frustration and concerns with the management of the A2A Group."

64. In the alternative, even if the Court has concerns about the ability of the Additional Project Entities to efficiently, effectively, or transparently carry out the distribution process, that does not justify the sweeping relief being sought. Rather, the Court could issue more targeted and less invasive Orders to ensure oversight of the distribution. Any Order that interferes with the sale and marketing of the properties, which by all accounts is being handled in a perfectly reasonable fashion, would be inappropriate and simply adds unnecessary costs to the process.

Extraordinary Relief and Alternate Remedies

65. It cannot seriously be disputed that the relief sought against the Additional Project Entities is extraordinary relief. It effectively strips the companies of all management and control of the companies, including control of ongoing sales processes. While the application before the court is to appoint a Monitor with enhanced powers rather than a receiver, the relief essentially carries the same force and effect as the appointment of a receiver.

66. The Alberta Court of Appeal decision in *BG International Ltd. v. Canadian Superior Energy Inc., 2009 ABCA 127* **[TAB 2]** *s*erves as a good reminder that receivership represents an extraordinary remedy of last resort. In that case, the Court of Appeal states (at paras. 16 – 17):

> **We agree that the appointment of a receiver is a remedy that should not be lightly granted. The chambers judge on such an application should carefully explore whether there are other remedies, short of a receivership, that could serve to protect the interests of the applicant.** For example, the order might be granted but stayed for, say, 48 hours to allow the company to cure deficiencies, propose alternatives, or clarify the record.

> In particular, the chambers judge must carefully balance the rights of both the applicant and the respondent. The mere appointment of a receiver can have devastating effects. The respondent referred us to the statement in *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]) at para. 31:
>
> > [31] With respect to the hardship to Odyssey and Weston should a receiver be appointed, I am unable to find any evidence of undue or extreme hardship. Obviously the appointment of a receiver always causes hardship to the debtor in that the debtor loses control of its assets and business and may risk having its assets and business sold. The situation in this case is no different.
>
> This quotation does not reflect the law of Alberta. Under the *Judicature Act*, it must be "just and convenient" to grant a receivership order. Justice and convenience can only be established by considering and balancing the position of both parties. **The onus is on the applicant. The respondent does not have to prove any special hardship, much less "undue hardship" to resist such an application. The effect of the mere granting of the receivership order must always be considered, and if possible a remedy short of receivership should be used.** [emphasis added]

67. This Court ought to exercise great caution in imposing such extraordinary relief, particularly given:
    a. The potential impact on co-owners, who are not parties to the proceedings; and
    b. the availability of less invasive remedies.

68. Particularly with respect to Meaford, co-owners stand to suffer irreparable harm if the appointment results in a loss of the conditional sale, which is a legitimate risk. Such a result would fly in the face of the express wishes of an overwhelming majority the co-owners (over 93%) to pursue that sale.

69. If any of the current Debtor Companies, in whose shoes the Monitor stands, have been aggrieved or feel they're entitled to payment or information from the Additional Project Entities, there is no reason why they cannot have resort to normal civil remedies.

70. Without limitation, A2A Developments Inc., which is the shareholder of the Additional Project Entities, has rights and remedies under the *Business Corporations Act*. This contrasts with the situation facing the original applicants in these proceedings, whose purchase of limited partnership units, trust units, bonds, and UFIs, did not, as Justice Feasby found, allow them to enjoy the rights afforded to shareholders in corporate law.

71. In addition, if co-owners do not wish to continue with the Additional Project Entities as Facilitators, there is a process under the Trust Deed to replace the Facilitator by way of ordinary resolution, and a meeting to vote on the same can be called by 15% of co-owners (see clauses

7.02 and 10 of the Trust Deed). Indeed, the record shows that co-owners have the ability to exercise these sorts of rights, having replaced Wingham as Facilitator of the Wingham Lands. They do not require the Monitor to ride to their rescue.

72. The preceding points serve as a distinguishing factor from the remedies available to the investors in the AMP, Windridge, and Fossil Creek projects. With those projects, the Canadian investors were conglomerated into limited partnerships of which they had no effective control. The Canadian investors were not co-owners and therefore had no voting rights. This is not the situation for any of the co-owners in the Meaford Lands, Lake Huron Lands, or Wingham Lands.

V. REMEDY SOUGHT

73. The Additional Project Entities respectfully seek dismissal of the Monitor's Application with costs.

74. In the alternative, the Additional Project Entities request the Court grant a more limited Order than that sought by the Monitor, tailored to provide the Monitor and Court with oversight over the distribution of any sale proceeds without interfering with existing sales processes that are underway.

Respectfully submitted this 24th day of July, 2025

_____

Dan Jukes, Miles Davison LLP
Counsel to Meaford A2A Developments Inc., Lake Huron A2A Developments Inc., and Wingham Creek A2A Developments Inc.

the *CCAA* proceedings shall terminate in respect of the Windridge and Fossil Creek entities, including the US LLCs.[50]

28. The Monitor has taken further steps since then; however, they are not subject to this appeal.

PART II: GROUNDS OF APPEAL

29. This Court granted permission to appeal on the following questions:

(a) Did the supervising justice err in concluding that the Canadian investors (referred to herein as the Applicant Investors)[51] came within the scope of the *CCAA*, and that the use of the *Act* in these circumstances was proper either in the Comeback Decision or in the earlier unreported decision on November 25, 2024 (the "**ARIO Decision**")? And, as a subsidiary question:

(b) Did the supervising justice err in concluding that entities within the A2A Group, including the Windridge and Fossil Creek Groups and the Texas LLCs, were subject to the *CCAA* in the Comeback Decision or in the earlier ARIO Decision?[52]

PART III: STANDARD OF REVIEW

30. The standard of review of correctness applies to errors of law. A standard of review of palpable and overriding error applies to the exercise of discretion and errors of fact or mixed fact and law with no extractable legal error.[53]

PART IV: ARGUMENT

A. The Lower Court erred in concluding that the Canadian Investors came within the scope of the *CCAA* in the circumstances

1. The scope of the *CCAA*

31. The purpose of *CCAA* proceedings is to assist insolvent companies in developing and seeking compromises and arrangements *with their creditors*,[54] as is reflected in the statute's title.

32. Section 11.02(1) of the *CCAA* does not specify *who* may commence a *CCAA* proceeding, nor does section 11.[55] In the ARIO Decision, Justice Simard concluded that the Applicant Investors

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[50] *Ibid* at paras 67, 87-88.
[51] The decision granting permission to appeal identifies the "Canadian investors" as the group that initiated the application under the *CCAA*: *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2025 ABCA 147 [***Leave Decision***] at para 3.
[52] *Leave Decision, supra* paras 37-38; Orders granting permission to appeal filed May 6, 2025 **[AR, TAB 15]**
[53] *Resurgence Asset Management LLC v Canadian Airlines Corporation*, 2000 ABCA 149 at para 29, 19 CBR (4th) 33; *Atlantic Sea Cucumber Ltd v Weihai Taiwei Haiyang Aquatic Food Co Ltd*, 2024 NSCA 35 at para 32, 12 CBR (7th) 24.
[54] *ARIO Decision, supra* at p 6/41-7/5 **[AR, TAB 3]**.
[55] *CCAA, supra* s 11, 11.02(1).

were "persons interested, as described in Section 11.02(1) of the *Act*" (which, in fact, does not reference "persons interested"), and that they had standing to apply for the Initial Order.[56] The Comeback Decision upheld that finding, noting that standing was not determinative of whether the *CCAA* was being used consistent with its purposes.[57]

33. Parliament cannot have intended that any party, regardless of what, if any, relationship it has with a company, can be granted an initial order against that company pursuant to the *CCAA*. Consideration of this issue requires more than a cursory review of section 11.02 of the Act. Driedger's modern principle to statutory interpretation is that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of parliament."[58] The Lower Court failed to do so.

34. A contextual review of the *CCAA* reveals that a holder of an equity interest does not necessarily have a right to meet or vote on a compromise or arrangement in *CCAA* proceedings, and does not have the right to apply to the court to request that the court order such a meeting. It is only if a court orders a meeting of shareholders (i.e., of holders of an "equity interest"),[59] on application of *the company, a secured or unsecured creditor, or a trustee in bankruptcy or liquidator of a company* that shareholders may meet to vote on a plan.[60] The scope of the *CCAA* expressly extends to instruments that govern the rights of *creditors* – not investors.[61]

35. It is difficult to fathom that Parliament intended that the holder of an equity interest could *commence CCAA* proceedings, when the *CCAA* itself does not necessarily allow any relief to the holder of an equity interest, and by its express terms, *does not permit an equity holder to apply to the court for an order for a meeting of the equity interest holders to vote on a plan.*[62] The Lower Court erred in law in limiting its consideration of this issue to the (incorrectly stated)[63] wording of

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[56] *ARIO Decision, supra* at p 8/18-9/7 [**AR, TAB 3**].
[57] Comeback Decision, *supra* at paras 55-61.
[58] Jackson & Sarra, *supra* at p 4 [**Authorities, TAB D**], citing E. A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at 67 [**Authorities, TAB E**]. See also *ibid* at p 5 citing *Rizzo & Rizzo Shoes Ltd*, 1998 CanLII 837, 1 SCR 27 (SCC) at paras 21, 23, where Iacobucci J. for the Court reaffirmed Driedger's modern principle and stated that "statutory interpretation cannot be founded on the wording of the legislation alone", and pp 32-33.
[59] *CCAA*, *supra* s 2(1), "equity interest".
[60] *CCAA*, *supra* ss 4, 5. Even in that case, no compromise or arrangement that provides for an equity claim can be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid: *CCAA*, *supra*, s 6(8).
[61] *CCAA*, *supra* s 8.
[62] *CCAA*, *supra* ss 4, 5.
[63] *ARIO Decision, supra* at p 8/18-9/7; *CCAA*, *supra*, s 11.02(1).

section 11.02(1) of the *CCAA*, without consideration of the scheme and object of the *CCAA* and the intention of Parliament.[64]

36. Counsel for the LLCs has conducted a survey of all initial orders granted in *CCAA* proceedings since September 2009[65] with regard to who the applicant was. All *CCAA* proceedings in Canada since that time were commenced either by the debtor company, a secured creditor, an unsecured creditor, a receiver or interim receiver.[66] There is no known Canadian precedent for an investor or equity holder being granted an Initial Order over a debtor company.[67]

37. None of the Applicant Investors are secured or unsecured creditors of any of the Appellants, nor are they investors in the LLCs.[68] Certain of the Applicant Investors are investors in Fossil Creek A2A Trust or Windridge A2A Trust. An equity claim does not create a debtor-creditor relationship.[69]

38. This Court need not determine whether equity holders are prohibited from commencing *CCAA* proceedings in *any* circumstances, nor is that the question for which permission to appeal has been granted in this case. The question to be determined is whether the Canadian investors came within the scope of the *CCAA* and the use of the *Act* in *these circumstances* was proper. The Appellants submit it was not, and that the Lower Court erred in continuing the *CCAA* proceedings.

39. Consideration of whether the Applicant Investors came within the scope of the *CCAA* and whether the use of the *CCAA* in the circumstances was proper requires consideration of the circumstances set out below.

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[64] See paras 31 and 34 of this Factum.
[65] The Office of the Superintendent of Bankruptcy's website includes this information since 2009: *CCAA Records after 2014*, online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/CCAA-records-search-after-2014> **[Authorities, TAB B]**; *CCAA Records 2014-2009*, online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/ccaa-records-2009-2014> **[Authorities, TAB C]**.
[66] *Forbes, supra* p 2 **[Authorities, TAB A]**; *CCAA Records after 2014*, online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/CCAA-records-search-after-2014> **[Authorities, TAB B]**; *CCAA Records 2014-2009*, online: <https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/ccaa-records-2009-2014> **[Authorities, TAB C]**. Of the 561 *CCAA* proceedings commenced since 2009, 33 (5.9%) were commenced by parties other than debtor companies. 25 (4.5%) were commenced by secured creditors, 3 (0.5%) were commenced by unsecured creditors, 3 (0.5%) were commenced by a receiver, 1 (0.2%) was commenced by an interim receiver, and 1 (0.2%) was commenced by a liquidator/monitor along with a debtor company. The other 94.1% were commenced by debtor companies.
[67] To be clear, *CCAA* proceedings commenced by a debtor company are initiated by the directors of the debtor company – not by its shareholders.
[68] *ARIO Decision, supra* at p 6/41-7/35 **[AR, TAB 3]**. To be clear, certain of the investors in the Angus Manor project hold bonds from the Angus Manor CCAA Respondents, and thus are creditors of those entities, but that is not the case with respect to any of the Windridge or Fossil Creek entities (i.e., the Appellants in these appeals).
[69] *All Canadian Investment Corporation (Re)*, 2019 BCSC 1488 at para 72, 72 CBR (6th) 73.

2009 ABCA 127
Alberta Court of Appeal

BG International Ltd. v. Canadian Superior Energy Inc.

2009 CarswellAlta 469, 2009 ABCA 127, [2009] A.W.L.D. 1936, [2009] A.W.L.D. 1973, [2009] A.J. No. 358, 177 A.C.W.S. (3d) 41, 457 A.R. 38, 457 W.A.C. 38, 53 C.B.R. (5th) 161, 71 C.P.C. (6th) 156

BG International Limited (Respondent / Plaintiff) and Canadian Superior Energy Inc. (Appellant / Defendant)

R. Berger, F. Slatter, P. Rowbotham JJ.A.

Heard: March 10, 2009
Judgment: April 7, 2009
Docket: Calgary Appeal 0901-0048-AC

Counsel: V.P. Lalonde, M.A. Thackray, Q.C. for Appellant
C.L. Nicholson, M.E. Killoran for Respondent
T.S. Ellam for Interested / Affected Party, Challenger Energy Corp.
H.A. Gorman for Interested / Affected Party, Canadian Western Bank
L.B. Robinson, Q.C for Receiver, Deloitte & Touche Inc.

Subject: Corporate and Commercial; Natural Resources; Contracts; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Debtors and creditors

VII Receivers
VII.3 Appointment
VII.3.a General principles

Natural resources

III Oil and gas
III.6 Exploration and operating agreements
III.6.b Joint operating agreement

Headnote

Debtors and creditors --- Receivers — Appointment — General principles

Defendant was operator of well and plaintiff paid its share of invoice of M, which was operator of semi-submersible rig, to defendant, but funds were not forwarded to M — Plaintiff commenced arbitration proceedings under joint operating agreement and obtained order from chambers judge appointing interim receiver to take control of oil well pending hearing of arbitration — Defendant appealed decision appointing interim receiver — Appeal dismissed — Real risk existed that M would remove rig and it was in interests of all parties that rig stay on well and that well be flow-tested — Defendant was in default and was unable to cure this, and plaintiff did not dispute its obligation to pay defendant's share of operating expenses — Extending to plaintiff protection of receiver's certificates was not unreasonable exercise of chamber judge's discretion and no evidence existed showing that this created any serious prejudice to defendant — Practical effect of accelerating removal of defendant as operator of well was apparent since it did not have funds to cure its defaults, and this removal merely accelerated inevitable and did not cause it significant prejudice.

Natural resources --- Oil and gas — Exploration and operating agreements — Joint operating agreement

Interim receiver — Defendant was operator of well and plaintiff paid its share of invoice of M, which was operator of semi-submersible rig, to defendant, but funds were not forwarded to M — Plaintiff commenced arbitration proceedings under joint operating agreement and obtained order from chambers judge appointing interim receiver to take control of oil well pending hearing of arbitration — Defendant appealed decision appointing interim receiver — Appeal dismissed — Real risk existed that

M would remove rig and it was in interests of all parties that rig stay on well and that well be flow-tested — Defendant was in default and was unable to cure this, and plaintiff did not dispute its obligation to pay defendant's share of operating expenses — Extending to plaintiff protection of receiver's certificates was not unreasonable exercise of chamber judge's discretion and no evidence existed showing that this created any serious prejudice to defendant — Practical effect of accelerating removal of defendant as operator of well was apparent since it did not have funds to cure its defaults, and this removal merely accelerated inevitable and did not cause it significant prejudice.

Table of Authorities

Cases considered:

Medical Laboratory Consultants Inc. v. Calgary Health Region (2005), 19 C.C.L.I. (4th) 161, 43 Alta. L.R. (4th) 5, 2005 ABCA 97, 2005 CarswellAlta 333, 363 A.R. 283, 343 W.A.C. 283 (Alta. C.A.) — referred to

Roberts v. R. (2002), 2002 CarswellNat 3438, 2002 CarswellNat 3439, (sub nom. *Wewaykum Indian Band v. Canada)* 2002 SCC 79, (sub nom. *Wewaykum Indian Band v. Canada)* [2003] 1 C.N.L.R. 341, (sub nom. *Wewaykum Indian Band v. Canada)* 220 D.L.R. (4th) 1, (sub nom. *Wewayakum Indian Band v. Canada)* 297 N.R. 1, (sub nom. *Wewaykum Indian Band v. Canada)* [2002] 4 S.C.R. 245, (sub nom. *Wewayakum Indian Band v. Canada)* 236 F.T.R. 147 (note) (S.C.C.) — referred to

Royal Bank v. W. Got & Associates Electric Ltd. (1999), 178 D.L.R. (4th) 385, 1999 CarswellAlta 892, 1999 CarswellAlta 893, 247 N.R. 1, 73 Alta. L.R. (3d) 1, [2000] 1 W.W.R. 1, 250 A.R. 1, 213 W.A.C. 1, [1999] 3 S.C.R. 408, 15 P.P.S.A.C. (2d) 61 (S.C.C.) — referred to

Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]) — considered

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

Judicature Act, R.S.A. 2000, c. J-2

Generally — referred to

APPEAL by operator of oil well of decision appointing interim receiver.

***Per curiam*:**

1 This is an appeal of a decision appointing an interim receiver to take control of the Endeavour oil well located off the coast of Trinidad and Tobago. The appeal was dismissed following oral argument, with reasons to follow.

Facts

2 The appellant and the respondent both have an interest in the well. The appellant is the operator of the Endeavour well under the standard form joint operating agreement approved by the Association of International Petroleum Negotiators. While Challenger Energy Corp. is a party to the joint operating agreement, there is some dispute as to whether Challenger has effectively acquired a part of the appellant's interest, which would trigger its obligations.

3 There is at present a semi-submersible rig working on the well. The rig is operated by Maersk Contractors Services on behalf of the owners of the rig. All the parties agree that it is extremely important that the rig is not removed from the well, and that the well be flow tested. Maersk sent its invoice for its November operations. The respondent paid its share of the invoice to the appellant, but those funds were not forwarded to Maersk. Once the invoice became overdue, Maersk commenced the process under the drilling contract that would allow it to terminate the contract.

4 When the respondent found out that Maersk had not been paid, it became very concerned. It deposes that operating funds were not being kept in a segregated account as covenanted. It deposes that the appellant is in default of its obligations by not paying Maersk. The appellant does not dispute that Maersk has not been paid. It proposed a payment schedule to Maersk (which Maersk rejected), which is essentially an acknowledgment that payments are overdue.

5 The respondent commenced arbitration proceedings in accordance with the joint operating agreement. It then immediately applied to the Court of Queen's Bench for interim relief pending the hearing of the arbitration, as contemplated by Article 18.2 (C)(9) of the arbitration clause. The application for an interim receiver was brought on very quickly. The Canadian Western Bank, which held security over the appellant's assets, was given notice and appeared. While the appellant was also given notice of and appeared at the application, it did not have time to file an affidavit in response nor to cross examine on the respondent's affidavit. An adjournment to do that was denied, and the interim receiver was appointed on February 11th, 2009. The order protected the priority of the Canadian Western Bank, and gave second priority to the respondent's advances. This appeal was promptly launched and expedited.

Standard of Review

6 Granting a receivership order under the *Judicature Act*, R.S.A. 2000, c. J-2, involves the exercise of a discretion. The granting of the order will not be interfered with on appeal unless it is based on an error of law, or the granting of the remedy is wholly unreasonable in the circumstances: *Roberts v. R.*, 2002 SCC 79, [2002] 4 S.C.R. 245 (S.C.C.) at para. 107; *Medical Laboratory Consultants Inc. v. Calgary Health Region*, 2005 ABCA 97, 43 Alta. L.R. (4th) 5 (Alta. C.A.) at para. 3.

Appointment of the Receiver

7 The chambers judge was motivated to appoint the interim receiver without any delay because she perceived a real risk that Maersk would remove the rig, thereby causing irreparable harm to all concerned. The respondent was prepared to advance $47 million through the receiver to complete the work on the well. The appellant argues, first, that there was no real prospect of Maersk removing the rig, and that Maersk was merely taking steps to preserve its legal rights. It is argued the chambers judge committed a palpable and overriding error in finding a real risk the rig would be removed.

8 The record shows, however, that Maersk was taking the formal steps under the drilling contract that were conditions precedent to the termination of that contract. While Maersk wrote that it would show "flexibility", that was premised on the appellant proposing an "acceptable" solution. Maersk had already rejected the appellant's payment schedule, and was resisting attempts to postpone the dispute resolution meeting that was a precondition to termination. The respondent's witness deposed that Maersk did not propose to test the well unless paid, and that Maersk preferred to move the rig to another well in Australia. He also deposed that if the rig was removed, it would take approximately one year and cost $35 million to bring in a replacement. The finding of a risk of removal of the rig made by the trial judge is supported by the record, and does not warrant appellate interference.

9 Next the appellant argues that it was denied its basic rights because it was not granted an adjournment, it was not allowed to cross examine on the respondent's affidavit, and it was not given time to file its own affidavit. Despite the presence of the appellant, the application proceeded almost as if it was an *ex parte* application. While there is substance to this complaint, it is not uncommon for interim receivers to be appointed on an *ex parte* basis, and there were remedies available to review or withdraw the order granted. Given the urgency found by the chambers judge, the method of proceeding was not, in this case, fatal. We do not find that Article 18.2 (C)(9) of the arbitration provisions, which enables electronic hearings, effectively prohibits *ex parte* procedures.

10 The appellant was asked to suggest terms on which an adjournment might be granted, but persisted in its request for an adjournment that did not address the respondent's legitimate concerns. The chambers judge was entitled to conclude that the requested adjournment could itself have led to irreparable damage to all parties.

11 We note that in the weeks that have followed since the granting of the order, the appellant has still not cross examined on the respondent's affidavit, nor has it filed an affidavit in reply. Any such evidence could have been used in an application to set aside or vary what was similar to an *ex parte* order, it could have been used on the stay application, and it would likely have been admitted on this appeal. We conclude that the appellant's objections are to some extent tactical. Even though the record may be incomplete, many of the key facts are not in dispute, and the key documents are included. A fair picture of the situation can be obtained from this record, supplemented as it has been by counsels' submissions.

12 The appellant notes that under Article 18.3 (A) of the joint operating agreement, when one party gives notice of default it is required by the contract to pay the amounts owed by the defaulting party. The appellant points out that this is a contractual obligation, and that the respondent was required to pay all outstanding amounts without seeking any more security or protection than that provided by the operating agreement. By advancing the $47 million by way of receiver's certificates, the respondent has in effect managed to enhance its position under the contract. The respondent replies that it had already paid its share of the Maersk invoice, and the clause cannot mean that it has to pay twice the amount misapplied by the appellant. It also argues that the security provided by Article 18.4 (E) of the joint operating agreement may not cover all of the money the respondent proposes to advance.

13 The default clause in the joint operating agreement provides in Article 18.4 (H) that it is not intended to exclude any other remedies available to the parties. The enhanced security collaterally obtained by the respondent through the use of receiver's certificates has not been shown on this record to create any serious prejudice to the appellant. After all, it is the appellant that is in default, and the respondent is prepared to advance significant sums to cure that default, even if it is required to do so by the contract. The chambers judge found that the appellant had been commingling joint venture funds, and that the respondent had a reasonable concern about the protection of future advances. Unlike in most receivership cases, the funds advanced under this enhanced security are to be used to pay other creditors, and would not further subordinate their interests. The security of the receiver's certificates may merely be parallel to that already provided for in the operating agreement. While the appointment of the receiver does arguably have the effect identified by the appellant, that does not make the receivership order unreasonable in the circumstances.

14 The appellant also points out that the appointment of the interim receiver has had the effect of displacing it as the operator. While the respondent has initiated the procedure under Article 4 of the joint operating agreement to replace the appellant as operator because of its default, the mechanism provided for in the agreement would take at least 30 days. By applying for an interim receiver, the respondent has essentially accelerated that period of time during which the appellant could cure its default, and maintain its status as operator. Again, this submission of the appellant is not without substance. We note, firstly, that the appellant has not offered to cure its default, and indeed it appears it is unable to do so. We are advised by counsel that last Thursday the appellant was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. If the appellant was now in a position to cure its defaults, this point might be determinative of the appeal. Secondly, the parties had already agreed that the respondent should become the operator in April of this year. There is no significant prejudice to the appellant by the brief acceleration.

15 The appellant complains that the respondent was not required to post an undertaking to pay damages if it turns out its allegations are unfounded. Filing an undertaking in these circumstances is not the usual practice in Alberta. Damages for wrongful appointment of a receiver were granted in *Royal Bank v. W. Got & Associates Electric Ltd.*, [1999] 3 S.C.R. 408 (S.C.C.) without the presence of an undertaking. We note that the respondent has paid significant sums of money on behalf of the appellant, and that the appellant would likely have a right of set-off if it obtains an award of damages against the respondent. An undertaking would add little.

Conclusion

16 We agree that the appointment of a receiver is a remedy that should not be lightly granted. The chambers judge on such an application should carefully explore whether there are other remedies, short of a receivership, that could serve to protect the interests of the applicant. For example, the order might be granted but stayed for, say, 48 hours to allow the company to cure deficiencies, propose alternatives, or clarify the record.

17 In particular, the chambers judge must carefully balance the rights of both the applicant and the respondent. The mere appointment of a receiver can have devastating effects. The respondent referred us to the statement in *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]) at para. 31:

> [31] With respect to the hardship to Odyssey and Weston should a receiver be appointed, I am unable to find any evidence of undue or extreme hardship. Obviously the appointment of a receiver always causes hardship to the debtor in that the debtor loses control of its assets and business and may risk having its assets and business sold. The situation in this case is no different.

This quotation does not reflect the law of Alberta. Under the *Judicature Act*, it must be "just and convenient" to grant a receivership order. Justice and convenience can only be established by considering and balancing the position of both parties. The onus is on the applicant. The respondent does not have to prove any special hardship, much less "undue hardship" to resist such an application. The effect of the mere granting of the receivership order must always be considered, and if possible a remedy short of receivership should be used.

18 The chambers judge was aware of all of the points now raised by the appellant. She had a difficult job balancing the rights and interests of the parties. It is in the interests of all parties that the rig stay on the well, and that the well be flow tested. The appellant is in default. The respondent has not disputed its obligation to pay the appellant's share of operating expenses, and is quite willing to pay the $47 million required to do that. In all the circumstances it was not an unreasonable exercise of her discretion for the chambers judge to extend to the respondent the protection of receiver's certificates. The practical effect of accelerating the removal of the appellant as the operator was apparent to her. If the appellant does not have the necessary funds to cure its defaults, then its removal as operator merely accelerated the inevitable.

19 The chambers judge had to make a difficult decision in a very short period of time based on limited materials. Deference is owed to her discretionary decision to appoint a receiver. While an order short of a receivership might have been crafted, we have not been satisfied that her eventual balancing of the various rights and interests involved was unreasonable. She was primarily motivated by preserving the value of the well for the benefit of all concerned. We cannot see any error that warrants appellate interference, and the appeal is dismissed.

20 The dismissal of the appeal is not intended to limit the powers of the chambers judge or the CCAA case management judge. The receivership was to be "interim" only, and it has an internal mechanism for review. The Queen's Bench retains the ability to revoke or amend the order as circumstances dictate.

Appeal dismissed.

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