

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**AFFIDAVIT OF ROBERT KOFMAN
(sworn December 2, 2021)**

I, Robert Kofman, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President of KSV Advisory Inc. ("**KSV**"), a financial advisory services firm providing corporate restructuring and valuation services. I have personal knowledge of the matters to which I depose in this affidavit.
2. On October 5, 2021, KSV was retained by Aird & Berlis LLP ("**A&B**"), on behalf of First Capital Holdings (Ontario) Corporation ("**First Capital**"), to provide financial advisory services to A&B and First Capital in the context of the within proceeding commenced by McEwan Enterprises Inc. (the "**Company**").
3. I am swearing this affidavit in support of an adjournment request by First Capital of the Company's sale process approval motion (the "**Company's Sale Process Approval Motion**"), the notice of motion for which was served two days ago.

4. On Friday, November 5, 2021, I sent an email to the Monitor and its counsel (the "**November 5 Email**"), a copy of which is attached as **Exhibit "A,"** which states (in part):

In the circumstances, we believe that in addition to using the time between now and November 26th to both explore whether a settlement is possible and to advance the litigation, the time should be used to agree to the terms of a sale process. We welcome your views on this, but we are strongly of the view that a sale process should commence forthwith following the November 26th motion if the Court determines a sale process is necessary (regardless of the form of insolvency process). If the Company is not prepared to engage with us in this dialogue, we would be prepared to work with the Monitor as to the terms of a reasonable process.

I will make myself available over the weekend to discuss this.

5. On Sunday, November 7, 2021, I sent a further email to the Monitor and its counsel, a copy of which is attached as **Exhibit "B"** (with settlement details redacted). In this email, I authorized the November 5 Email to be shared with the Company's counsel. I also advised that:

We are prepared to draft the outline of a sale process. We'd like the views of the Monitor on the process before we start drafting. We can discuss on our call tomorrow.

6. At no time was First Capital or its advisors consulted about the content of the Company's Sale Process Approval Motion, or that it was even being prepared, until the morning on which the notice of motion was served (i.e., two days ago). At no time was First Capital or its advisors informed of the Monitor's proposed amendment to the Company's Sale Process Approval Motion identified at paragraph 4.9 of the Supplement to the Monitor's Third Report (the "**Third Report Supplement**"), or the undertaking provided by the Company to the Monitor identified at paragraph 4.10 of the Third Report Supplement, until the Third Report Supplement was served today at 12:30 p.m.

SWORN BEFORE ME over videoconference by Robert Kofman stated as being located in the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on December 2, 2021, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely

A Commissioner for taking affidavits

Robert Kofman

Jeremy Nemer

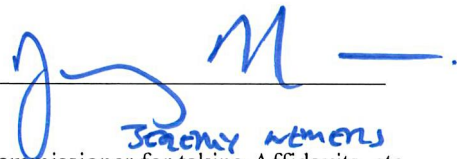
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 2nd day of December, 2021



Jeremy Womersley
Commissioner for taking Affidavits, etc

Jeremy Nemers

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: November 5, 2021 6:08 PM
To: zweigs@bennettjones.com; Greg Karpel (gkarpel@alvarezandmarsal.com); Josh Nevsky (jnevsky@alvarezandmarsal.com)
Cc: David Sieradzki; Jeremy Nemers; Steve Graff
Subject: RE: MEI

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

... If it's not clear from my email, the sale process would be approved at the Nov. 26th motion if the Court orders a sale process is required. My email does not explicitly say that, but I assume you gathered that's what I meant.



Bobby Kofman
President and Managing Director

T 416.932.6228
M 647.282.6228
W www.ksvadvisory.com

From: Bobby Kofman
Sent: November 5, 2021 6:03 PM
To: Sean Zweig (ZweigS@bennettjones.com) <zweigs@bennettjones.com>; Greg Karpel (gkarpel@alvarezandmarsal.com) <gkarpel@alvarezandmarsal.com>; Josh Nevsky (jnevsky@alvarezandmarsal.com) <jnevsky@alvarezandmarsal.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>; Jeremy Nemers <jnemers@airdberlis.com>; Steven Graff (sgraff@airdberlis.com) <sgraff@airdberlis.com>
Subject: MEI
Importance: High

Sean, Greg and Josh,

We wrapped up an update call with FCR just a few minutes ago. Generally, we appreciate the rationale for the adjournment of next week's motion to November 26th. We are concerned, however, that if the motion is heard on November 26th and the Court orders at that motion that there should be a sale process, a subsequent motion will be required to have the sale process approved. That motion would need to take place in December, likely toward the middle of the month, and the Court's availability will be an issue given the holiday season. Even if the motion is heard in December, it would be unwise to launch a sale process in the latter half of December. This further concerns us because we have no visibility as to MEI's cash flows beyond November 12th, let alone next year, and therefore no ability to understand the position that the Company (and Fairfax) may take as to the Company's liquidity to run a sale process. In the circumstances, we believe that in addition to using the time between now and November 26th to both explore whether a settlement is possible and to advance the litigation, the time should be used to agree to the terms of a sale process. We welcome your views on this, but we are strongly of the view that a sale process should commence forthwith following the November 26th motion if the Court determines a sale process is necessary (regardless of the form of insolvency process). If the Company is not prepared to engage with us in this dialogue, we would be prepared to work with the Monitor as to the terms of a reasonable process.

I will make myself available over the weekend to discuss this.

Best,

Bobby



Bobby Kofman	T	416.932.6228
President	M	647.282.6228
	E	bkofman@ksvadvisory.com

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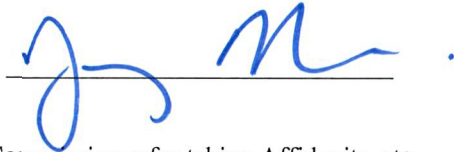
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 2nd day of December, 2021

A handwritten signature in blue ink, appearing to read "Serenity Nomens", is written over a horizontal line.

Commissioner for taking Affidavits, etc

Serenity Nomens





Jeremy Nemers

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: November 7, 2021 10:47 AM
To: zweigs@bennettjones.com
Cc: David Sieradzki; Steve Graff; Jeremy Nemers; Bobby Kofman; Josh Nevsky (jnevsky@alvarezandmarsal.com); Greg Karpel (gkarpel@alvarezandmarsal.com)
Subject: RE: Issues

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Sean,

I've had a chance to speak with Steve, Jeremy and David regarding the topics you and I discussed yesterday.

1.	Sale process	We are prepared to draft the outline of a sale process. We'd like the views of the Monitor on the process before we start drafting. We can discuss on our call tomorrow.
2.	My email sent to the Monitor on Friday afternoon re the sale process	The email can be provided to Goodmans
3.	Funding behind Fairfax	We have not discussed this with FCR. We will do so at the appropriate time; however, it seems to us that if Fairfax is not prepared to provide further funding, such funding (whether as a dip or similar, i.e. funding under receiver's certificates), should prime Fairfax, as is customary.
4.	Guidance re FCR's settlement proposal	
5.	Does FCR's offer of  	

Other issues to discuss on our call tomorrow:

1. Re my email to the Monitor with the five questions concerning the Company's performance during CCAA proceedings, will the Monitor be responding in writing to the three unanswered questions? Josh responded to two of them.
2. We assume that the Company will be seeking an extension on the 12th. We would like to discuss the good faith and due diligence requirement.
3. What is the duration of the stay that is being sought by the Company on the 12th? To the 26th? If so, that will require that a ruling be made on that date. It will be helpful to have a cash flow beyond that date so that the judge has some time to make a decision.

Thanks,

Bobby Kofman
President and Managing Director
KSV Advisory Inc.

(o) 416.932.6228
(c) 647.282.6228
bkofman@ksvadvisory.com

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Court File No.: CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**AFFIDAVIT OF ROBERT KOFMAN
(sworn December 2, 2021)**

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*Lawyers for First Capital Holdings (Ontario)
Corporation*