

COURT FILE NUMBER

2401-04879

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

DURISOL LTD.

RESPONDENTS

CANDESTO ENTERPRISES CORP., D3
INFRASTRUCTURE SERVICES INC., AND SAFE
ROADS ALBERTA LTD.

DOCUMENT

**APPLICATION BY ALVAREZ & MARSAL
CANADA INC., IN ITS CAPACITY AS
RECEIVER AND MANAGER OF CANDESTO
ENTREPRISES CORP., D3 INFRASTRUCTURE
SERVICES INC., AND SAFE ROADS ALBERTA
LTD.**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

GOWLING WLG (CANADA) LLP

Suite 1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

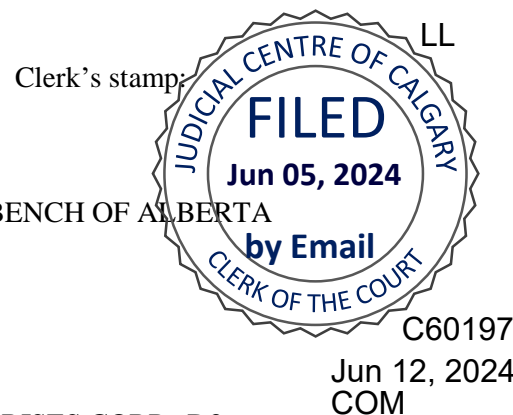
Telephone: 403-298-1018

Fax: 403-263-9193

Email: sam.gabor@gowlingwlg.com /
stephen.kroeger@gowlingwlg.com

File No.: A172830

Attention: Sam Gabor / Stephen Kroeger



NOTICE TO RESPONDENT(S):

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date: June 12, 2024

Time: 2:00pm

Where: Calgary Courts Centre, Calgary, Alberta
VIA WEBEX

Virtual Courtroom Link:
[Webex Instructions to be provided](#)

Before Whom: The Honourable Justice C.J. Feasby – Commercial List

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

Remedy claimed or sought:

1. Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver and manager (“**A&M**”, or the “**Receiver**”) over all of the current and future assets, undertaking and properties of every nature and kind whatsoever and wherever situate, including the proceeds thereof, of Candesto Enterprises Corp. (“**CEC**”), Safe Roads Alberta Ltd. (“**Safe Roads**”) and D3 Infrastructure Services Inc. (“**D3**”) (collectively, the “**Debtors**”), seeks the following:
 - (a) an Order (the “**Auction Approval and Vesting Order**”) substantially in the form attached hereto as **Schedule “A”**:
 - (i) declaring that the within Application is properly returnable and that service of this Application on the service list established in these proceedings is deemed good and sufficient;
 - (ii) authorizing the Receiver to enter into the Auction Agreement (the “**Auction Agreement**”) with McDougall Auctioneers Ltd. (the “**Auctioneer**”) on the terms set out in the Auction Agreement dated May 29, 2024 among the Auctioneer and the Receiver, a redacted copy of which is attached as Appendix C to the First Report of the Receiver dated June 4, 2024 (the “**First Report**”) and an unredacted copy of which is attached as Confidential Appendix 2 to the First Report;
 - (iii) authorizing the Auctioneer to conduct an auction in accordance with the terms of the Auction Agreement (the “**Auction**”);
 - (iv) notwithstanding the provisions of paragraph 3(l) of the Receivership Order granted in these proceedings by the Honourable Justice E.J. Sidnell dated April 17, 2024 (the “**Receivership Order**”) and vesting in the purchaser at such Auction (each, a “**Purchaser**”) the Debtors’ right, title and interest in and to the property purchased by such Purchaser at the Auction, free and clear of any claims and encumbrances; and
 - (v) approving the actions, activities and conduct of the Receiver, up to the date of the First Report, and the fees and disbursements of the Receiver and its counsel, Gowling WLG (Canada) LLP, up to and including May 31, 2024, as set out and more particularly described in the First Report;

- (b) an Order (the “**Restricted Court Access Order**”) substantially in the form attached hereto as **Schedule “B”** Restricted Court Access Order Confidential Appendices 1 and 2 to the First Report (together, the “**Confidential Appendices**”) on the Court record; and
- (c) such further and other relief as the Receiver may request and this Honourable Court may grant.

Grounds for making this application

Background

- 2. On December 20, 2023 this Honourable Court granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (as amended, the “**CCAA**”) with respect to the debtors (the “**CCAA Proceedings**”). On December 20, 2023 this Honourable Court granted an amended and restated Initial Order. Pursuant to the Initial Order A&M was appointed as Court appointed Monitor of the business and financial affairs of the Debtors.
- 3. On April 17, 2024 the CCAA Proceedings were terminated and the Receivership Order was granted.
- 4. Capitalized terms not otherwise defined in this Application have the meanings set forth in the Receivership Order and/or the First Report.

Approval of Auction Agreement and Vesting Order

- 5. Pursuant to the Receivership Order, the Receiver was authorized to, *inter alia*:
 - (a) market any or all of the Property (as defined in the Receivership Order), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (b) to apply for any vesting order or other orders (including confidentiality or Restricted Court Access Order orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Property; and

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order.
6. In accordance with the Receivership Order, the Receiver contacted auctioneers with experience in equipment and miscellaneous assets used in the Debtors' industry to solicit purchase offers or liquidation proposals for the property subject to the Auction (such assets being, the "**Auction Assets**").
7. The Receiver received auction proposals from three (3) auctioneers and other potential purchasers for the Auction Assets and is of the view that the Auction Agreement with the Auctioneer is superior as it provides for the best possible recovery for the Auction Assets and as such is in the best interests of the Debtors' stakeholders.
8. The Receiver is of the view that the proposed multi-platform, uniquely developed marketing strategy to be implemented by the Auctioneer pursuant to the Auction Agreement, together with the proposed timed online Auction outlined in the Auction Agreement, is fair and reasonable in the circumstances. The Receiver believes that such process will result in a fulsome canvassing of the market, and a maximization of available recoveries, all for the benefit of the Debtors' estates.
9. Paragraph 3(1) of the Receivership Order establishes monetary thresholds above which the Receiver is not permitted to sell Property out of the ordinary course of business without the approval of this Court. The Auction may generate sale proceeds in excess of such thresholds.
10. Given that the Auction will be conducted in a public and transparent manner with the fulsome canvassing of the market, and involve multiple individual sales transactions with multiple purchasers, it is appropriate that the Auction Approval and Vesting Order be granted.

Accounts and Activities of the Receiver and its Counsel

11. The First Report sets out a description of the activities which have been undertaken by the Receiver since the granting of the Receivership Order. All actions, activities and conduct of the Receiver have been undertaken in accordance with the Receivership Order and in the best interest of the Debtor's estate.

Restricted Court Access Order Order

12. A Restricted Court Access Order Order directing the Restricted Court Access Order of the Confidential Appendices is necessary due to the risk that the public disclosure of the offers submitted to the Receiver for the sale/purchase of the Auction Assets and contents of the Auction Agreement may prejudice the auction process and any future attempt to sell the Auction Assets. There are no reasonable alternative measures, and the benefits of a Restricted Court Access Order order would outweigh any negative effects on the interests of the public.
18. Such further and other relief as counsel may advise and this Honourable Court may permit.

MATERIAL OR EVIDENCE TO BE RELIED ON:

23. The pleadings and proceedings herein;
24. The pleadings and proceedings in the CCAA Proceedings bearing Court File No. 2301-16982;
25. The First Report of Alvarez & Marsal Canada Inc. dated June 4, 2024;
26. The Confidential Supplement to the First Report of Alvarez & Marsal Canada Inc. dated June 4, 2024;
27. Motion Brief of the Receiver; and
28. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES:

29. Bankruptcy Rules 3 and 6(1);
30. The *Alberta Rules of Court*, Alta Reg. 124/2010, including Rules 1.2, 1.4, 6.1, 6.2 and 6.3; and
31. Such further and other Rules as counsel may advise and this Honourable Court may permit.

APPLICABLE ACTS AND REGULATIONS:

32. Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3) ss. 243(1); and
33. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

34. By Web-Ex, before the Honourable Justice C.J. Feasby Chambers sitting on the Commercial List.

WARNING

If you do not come to Court 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 want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

DRAFT AUCTION APPROVAL AND VESTING ORDER

COURT FILE NUMBER 2401-04879

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT DURISOL LTD.

RESPONDENT CANDESTO ENTERPRISES CORP., D-3
INFRASTRUCTURE SERVICES INC., AND SAFE
ROADS ALBERTA LTD.

DOCUMENT **AUCTION APPROVAL AND VESTING ORDER**

Clerk’s Stamp

ADDRESS FOR
SERVICE AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

Telephone (403) 298-1018
Facsimile (403) 263-9193
Email sam.gabor@gowlingwlg.com / stephen.kroeger@gowlingwlg.com

File No. A172830

Attention: Sam Gabor / Stephen Kroeger

DATE ON WHICH ORDER WAS PRONOUNCED: June 12, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice C.J. Feasby

UPON THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of Candesto Enterprises Corp., D-3 Infrastructure Services Inc. and Safe Roads Alberta Ltd. (collectively, the “**Debtors**”) for an Order, among other things: (i) authorizing the Receiver to enter into an auction services agreement (the “**Auction Agreement**”) with McDougall Auctioneers Ltd. (the “**Auctioneer**”) on the terms set out in the amended auction proposal dated May 22, 2024 as described in the First Report of the Receiver dated June 4 (the “**First Report**”), 2023; (ii) authorizing the Auctioneer to conduct an auction in accordance with the terms of the Auction Agreement (the “**Auction**”); and (iii) vesting in each purchaser at such Auction (each, a “**Purchaser**”), the Debtors’ right, title and interest in and to the property purchased by such Purchaser at the Auction (the “**Purchased Assets**”), free and clear of any claims and encumbrances; **AND UPON** reading the Receivership Order granted by the

Honourable Justice E. Sidnell on April 17, 2024; **AND UPON** reading the First Report, the Confidential Appendices to the First Report, and the Affidavit of Service of Kristy DeJure, sworn June ____, 2024; **AND UPON** hearing from counsel for the Receiver, counsel for Durisol Ltd., and such other interested parties who may be present;

IT IS HEREBY ORDERED THAT:

Service

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this motion, and time for service of this motion is abridged to that actually given.

Approval of Auction Agreement

2. The Auction Agreement is approved and the Receiver is hereby authorized, but not obligated to enter into the Auction Agreement between the Receiver and the Auctioneer and conduct the auction
3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auction.
4. Upon:
 - (a) the Auctioneer completing a sale to a Purchaser at the Auction of one or more Purchased Assets;
 - (b) receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction; and
 - (c) delivery by the Auctioneer to such Purchaser of a bill of sale or similar evidence of purchase and sale (each, a “**Purchaser’s Bill of Sale**”),

(each an “**Auction Transaction**” and collectively, the “**Auction Transactions**”),

all of the Debtors’ right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser’s Bill of Sale shall vest absolutely in the name of such Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order; and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;

and, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. From and after the closing of each of the Auction Transactions (including the payment of the purchase price by the Purchaser to the Auctioneer), the Receiver or the Auctioneer are authorized to discharge from the Personal Property Registry (Alberta) and or any other personal property registry system any claim registered against any of the personal property being purchased by the Purchaser, to the extent the security interest is registered against the interest of the Debtors.
6. Upon the completion of all of the Auction Transactions to the satisfaction of the Receiver, the Receiver shall file a certificate substantially in the form attached hereto as Schedule “A” certifying that the Auction Transactions have closed (the “**Receiver’s Certificate**”).
7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets at the Auction (to be held in a trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Purchaser’s Bill of Sale all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to their sale at Auction, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
8. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Auction Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtors.
9. The Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by or through or against the Debtors.

11. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors,

the vesting of each of the Purchased Assets in its respective Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Auction Transactions.

Miscellaneous

13. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Approval of Accounts and Activities

14. The Receiver's accounts for fees and disbursements up to and including May 31, 2024, as set out in the First Report, are hereby approved without the necessity of a formal passing of its accounts.

15. The accounts of the Receiver's legal counsel, Gowling WLG (Canada) LLP, for its fees and disbursements up to and including May 31, 2024, as set out in the First Report, are hereby approved without the necessity of a formal assessment of its accounts.

16. The Receiver's actions, activities and conduct, up to and including June 4, 2024, as set out in the First Report and the schedule of receipts and disbursements attached thereto are hereby ratified and approved.

Justice of the Court of King's Bench of
Alberta

**SCHEDULE “A”
(Form of Receiver’s Certificate)**

COURT FILE NUMBER 2401-04879

Clerk’s Stamp

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT DURISOL LTD.

RESPONDENTS CANDESTO ENTERPRISES CORP., D3 INFRASTRUCTURE
SERVICES INC. AND SAFE ROADS ALBERTA LTD.

DOCUMENT **RECEIVER’S CERTIFICATE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

GOWLING WLG (CANADA) LLP
1600, 421 7th Ave NS
Calgary, AB T2P 4K9

Telephone (403) 298-1018
Facsimile (403) 263-9193
Email sam.gabor@gowlingwlg.com / stephen.kroeger@gowlingwlg.com

File No. A172830

RECITALS

A. Pursuant to an Order of the Honourable Justice E. Sidnell of the Court of King’s Bench of Alberta (the “**Court**”) dated April 17, 2024, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Candesto Enterprises Corp. D3 Infrastructure Services Inc. and Safe Roads Alberta Ltd. (collectively, the “**Debtors**”).

B. Pursuant to an Auction Approval and Vesting Order granted by the Honourable Justice C.J. Feasby on June 12, 2024, the Court approved an Auction Proposal made as of May 29, 2024 (the “**Auction Agreement**”) between the Receiver, in its capacity as receiver and manager of the Debtors and McDougall Auctioneers Ltd. pursuant to which one or more auction transactions may be completed (the “**Auction Transactions**”).

C. Capitalized terms not otherwise defined herein have the meanings given to those terms in the Auction Agreement.

THE RECEIVER CERTIFIES THE FOLLOWING:

1. The Auction Transactions have been completed to the satisfaction of the Receiver.
2. This Certificate was delivered by the Receiver at _____ on _____ , 2024.

ALVAREZ & MARSAL CANADA INC.,
in its capacity as receiver and manager of
Candesto Enterprises Corp. D3 Infrastructure
Services Inc. and Safe Roads Alberta Ltd. and
not in its personal or corporate capacity

Name:

Title:

SCHEDULE "B"

DRAFT RESTRICTED COURT ACCESS ORDER ORDER

COURT FILE NUMBER 2401-04879

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT DURISOL LTD.

RESPONDENT CANDESTO ENTERPRISES CORP., D-3
INFRASTRUCTURE SERVICES INC., AND SAFE
ROADS ALBERTA LTD.

Clerk’s Stamp

DOCUMENT **RESTRICTED COURT ACCESS ORDER**

ADDRESSFOR
SERVICEAND CONTACT
INFORMATIONOF
PARTY FILING THIS
DOCUMENT

Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

Telephone (403) 298-1018
Facsimile (403) 263-9193
Email sam.gabor@gowlingwlg.com / stephen.kroeger@gowlingwlg.com

File No. A172830

Attention: Sam Gabor / Stephen Kroeger

DATE ON WHICH ORDER WAS PRONOUNCED: June 12, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice C.J. Feasby

UPON THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of Candesto Enterprises Corp., D-3 Infrastructure Services Inc. and Safe Roads Alberta Ltd.; **AND UPON** reading the Receivership Order granted by the Honourable Justice E. Sidnell on April 17, 2024; **AND UPON** reading the First Report of the Receiver dated June 4, 2024, the Confidential Appendices to the First Report (the “**Confidential Appendices**”); **AND UPON** hearing from counsel for the Receiver, counsel for Durisol Ltd., and such other interested parties who may be present;

IT IS HEREBY ORDERED THAT:

Sealing

1. Subject to further Order of this Honourable Court, the Confidential Appendices shall be sealed on the Court file and shall not form part of the public record, notwithstanding Division 4, Part 6 of the Alberta Rules of Court, until 30 days after the filing of the Receiver's Certificate indicating the close of the sale of the Purchased Assets (as such terms are respectively defined in the Auction Approval and Vesting Order dated June 12, 2024), unless and until an application is made to modify or vary this Order.
2. The Clerk of this Honourable Court shall file the Confidential Appendices in a sealed envelope, and the Confidential Appendices and envelope shall each have attached to them a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY ALVAREZ & MARSAL CANADA INC. WHICH IS SEALED PURSUANT TO THE RESTRICTED COURT ACCESS ORDER ISSUED BY THE HONOURABLE JUSTICE C.J. FEASBY ON JUNE 12, 2024.
3. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying, or varying the terms of this Order, with such application to be brought on notice to the Receiver.

Justice of the Court of King's Bench of
Alberta