

COURT FILE NO. 2301-16982

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS CHRIS BOKENFOHR and VOR ALLEM CONSULTING LTD.

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

DOCUMENT **APPLICATION**

PARTY FILING THIS DOCUMENT **CHRIS BOKENFOHR and VOR ALLEM CONSULTING LTD.**

ADDRESS FOR SERVICE AND
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File No.: 20231555

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

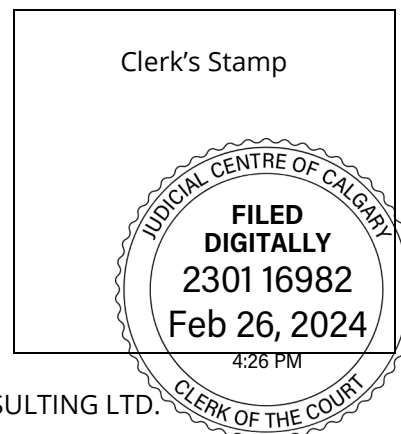
This application is made against you. You are the Respondents.

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

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

Date: March 5, 2024
Time: 2:00 p.m.
Where: Calgary Courts Centre, Calgary – Remotely (via Webex)
Before Whom: The Honourable Justice E. J. Sidnell

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



Remedy claimed or sought:

1. The Applicants, Chris Bokenfohr ("**Mr. Bokenfohr**") and Vor Allem Consulting Ltd. ("**Vor Allem**"; collectively the "**Applicants**") seek:
 - (a) A declaration that the Non-competition and Non-solicitation Undertaking provided by the Applicants to Batavi Ventures Group Ltd. ("**Batavi**"), Candesto Enterprises Corp. ("**Candesto Corp**"), D3 Infrastructure Services Inc. ("**D3**"), and Safe Roads Alberta Ltd. ("**Safe Roads**") is void as against Candesto Corp, D3 and Safe Roads (collectively, the "**CCAA Companies**") and is no longer of any legal force and effect;
 - (b) Costs of this Application; and
 - (c) Such further judgment or award as this Honourable Court deems fair and just in the circumstances.

Grounds for making this application:

Background

2. Candesto Corp and D3 previously operated as roadway signage, guardrail, and high-tension cable barrier installation companies. Safe Roads operated as a road safety infrastructure supply company, whose primary customers were Candesto Corp and D3.
3. The Applicants held the following interests in the Corporations prior to May, 2022:
 - (a) Mr. Bokenfohr owned 50% of Candesto Corp;
 - (b) Vor Allem owned 20% of D3; and
 - (c) Vor Allem owned 20% of Safe Roads.

The Share Purchase Agreement

4. In late May, 2022, the Applicants sold their shares in the Corporations to Batavi pursuant to a share purchase agreement (the "**Share Purchase Agreement**").
5. The Applicants were to receive to total estimated amount of \$2,815,412.06 under the Share Purchase Agreement of which \$2,065,411.73 was to be paid to the Applicants by some or all of the CCAA Companies.
6. A term of the Share Purchase Agreement required Mr. Bokenfohr to execute a Non-Competition, Non-Solicitation Undertaking at closing (the "**Non-Competition Undertaking**").
7. To date, the Applicants have only received payment of \$125,000, which was paid at closing of the Share Purchase Agreement.

CCAA Protection

8. The CCAA Companies have filed for creditor protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**").
9. During the initial application for CCAA protection, counsel for the CCAA Companies confirmed to this Court:
 - (a) The CCAA Companies intend to complete existing projects and wind up; and
 - (b) It is highly unlikely that any amounts will be paid to any unsecured creditors of the CCAA Companies, including the Applicants.
10. The Non-Competition Undertaking should be declared of no force and effect as:
 - (a) The CCAA Companies do not have the financial resources to make the required payments to the Applicants owed under the Share Purchase Agreement;
 - (b) As the CCAA Companies are winding up operations, there is no need for the Non-Competition Undertaking to continue to be enforced during the CCAA proceedings; and
 - (c) Moreover, the CCAA Companies have no legitimate business interest to be protected.

Material or evidence to be relied on:

11. The pleadings in the within proceedings;
12. The brief in support of this application, filed;
13. The Affidavit of Chris Bokenfohr sworn February 26, 2024;
14. The Affidavit of Jan van Bruggen sworn December 18, 2023; and
15. Such further and other materials as Counsel may advise and this Honourable Court may permit.

Applicable rules:

16. Rules 1.2, 1.3, 1.4, 6.3, 10.29, 10.30, 10.33 and 13.25 of the *Alberta Rules of Court*.
17. Such other rules as Counsel may advise.

Applicable Acts and Regulations:

18. *Alberta Business Corporations Act*, RSA 2000, c. B-9.
19. *The Judgment Interest Act*, RSA 2000, c J-1.
20. *The Companies' Creditors Arrangement Act*, RSC 1985, c C-36.

How the application is proposed to be heard or considered:

21. Before the Honourable Justice E. J. Sidnell.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to 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 Applicants.