

COURT FILE NUMBER 2401-13217

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT GREENFIRE RESOURCES OPERATING CORPORATION

RESPONDENT VICEROY CANADIAN RESOURCES CORP.

DOCUMENT **BENCH BRIEF OF THE APPLICANT FOR AN
APPLICATION TO BE HEARD BY THE HONOURABLE
JUSTICE B. JOHNSTON ON OCTOBER 22, 2024 AT 2:00 P.M.**

ADDRESS FOR
SERVICE AND
CONTACT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Stephanie Clark

Telephone: (403) 260-7000 / (403) 260-7034

Facsimile: (403) 260-7024

Email: RVandemosselaer@osler.com / Sclark@osler.com

File Number: 1241968



C100600

COM
Oct 22, 2024

PART I - INTRODUCTION

1. This is the bench brief of the applicant, Greenfire Resources Operating Corporation (“**Greenfire**”), in support of its application for a receivership order (the “**Receivership Order**”) pursuant to sections 64 and 65 of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 (the “**PPSA**”) and section 13 of the *Judicature Act*, R.S.A. 2000, c. J-2, among other things:
 - (a) Appointing Alvarez & Marsal Canada Inc. to act as the receiver over and sales agent in respect of the marketing and sale of Viceroy Canadian Resources Corp.’s (“**Viceroy**”) working interest in the Plant (as defined below); and
 - (b) Declaring that the receiver is expressly empowered to act in respect of the marketing and sale of Viceroy’s working interest in the Plant, and in particular is authorized but not required to negotiate a sales solicitation process with Greenfire in which Greenfire would be a stalking horse bidder for Viceroy’s working interest the Plant.
2. Viceroy is in default for substantial amounts owed to Greenfire under the parties’ agreement governing the ownership and operation of a steam-assisted gravity drainage plant and facility. Payment is secured by an operator’s lien over Viceroy’s interest in the Plant.
3. Greenfire is also interested in purchasing Viceroy’s interest in the Plant. To avoid any suggestion of impropriety, Greenfire seeks an order appointing a limited receiver over Viceroy’s interest in the Plant to run a Court-supervised sales process in a fair and transparent manner. Granting the Receivership Order is just and convenient in these circumstances.

PART II - BACKGROUND

A. The Farm-In Agreement and Plant

4. Viceroy is a party to the Amended and Restated Farm-In and Participation Agreement, effective as of January 31, 2019 and amended and restated as of June 19, 2020 (the “**Farm-In Agreement**”) governing the ownership and operation of a steam assisted gravity

drainage plant and facility (the “**McKay SAGD Project**”).¹ Everest Canadian Resources Corp. (“**Everest**”) was the original counterparty to the Farm-In Agreement.²

5. Under the Farm-In Agreement:

- (a) Viceroy has a 5% working interest, and Everest had a 95% working interest, in the McKay SAGD Project, which includes a SAGD plant (the “**Plant**”);
- (b) Everest was the Operator (as defined in the Farm-In Agreement) of the joint lands and the Plant; and
- (c) Viceroy is obligated to pay its proportionate share of the costs and expenses incurred for the operations relating to the joint lands and the Plant.³

6. The Farm-In Agreement incorporates the 2007 CAPL Operating Procedures (the “**CAPL Operating Procedures**”), as amended by Schedule “B” of the Farm-In Agreement, which grant the Operator of the McKay SAGD Project and the Plant an Operator’s lien (the “**Operator’s Lien**”) over the McKay SAGD Project and the Plant:

Operator's Lien-As of the effective date of the Agreement or such later date as this Schedule applies to the affected Joint Lands, the Operator will have a lien and charge with respect to the interest of each Party in the Joint Lands, the wells and equipment thereon, the Petroleum Substances produced therefrom and any other Joint Property, to secure payment of that Party's share of the costs and expenses incurred for the Joint Account. Subject to the Regulations, that lien and charge has priority over any other lien, charge, mortgage or other security interest applicable to those interests, provided that this will not preclude a Party from entering into any bona fide financing that requires a pledge or the granting of other security.⁴

7. The CAPL Operating Procedures further provide that the Operator’s Lien may be enforced by a sale of the non-Operator’s working interest:

Default Remedies-It is the Parties' general intention that the remedies in this Clause only be used on a *bona fide* basis with respect to failure to pay amounts owing hereunder. Subject to the last paragraph of this Subclause and the

¹ Affidavit of Robert Logan sworn September 6, 2024 (the “**Logan Affidavit**”) at Exhibit C.

² Logan Affidavit at para. 4. Capitalized terms not otherwise defined have the same meaning as in the Logan Affidavit.

³ Logan Affidavit at para. 5.

⁴ Logan Affidavit at paras. 6, 8, citing the CAPL Operating Procedures at section 5.05(A).

Regulations, if a Non-Operator does not pay as and when due any amounts required to be paid by it under Clause 5.02, the Operator may, without limiting its other rights hereunder or otherwise held at law or in equity:

...

(g) provided that the Operator obtains any required court order confirming a disposition under this Paragraph before it is completed, enforce the lien referred to in Subclause 5.05A on the following basis:

(i) by taking possession of and using free of charge any part of that defaulting Non-Operator's Working Interest in the Joint Lands and other Joint Property and all of its rights relating to that Working Interest until the default is fully rectified;

(ii) ... by disposing of any Working Interest of which it has taken possession in whole, in part or in separate parcels, at public auction or by private tender on whatever terms it may arrange, having given at least 10 Business Days' prior notice to that Non-Operator of the time and place of that disposition;

(iii) the Operator may only dispose of that Working Interest for such price and on such conditions as it determines on a bona fide basis are reasonable, having due regard to the possible recovery of funds for that Non-Operator in excess of the amount owed by It hereunder;

(iv) that disposition will be without prejudice to the Operator's claim for deficiency, and will be free from any right of redemption by that Non-Operator, which right is hereby waived, and that Non-Operator also waives all formalities prescribed by custom or by law respecting that disposition;

(v) the Operator will apply the proceeds of that disposition to the amount then owing to it by that Non-Operator under this Agreement, including accrued interest and reasonable costs incurred by it in making that disposition, such as reasonable legal fees and disbursements on a solicitor and its own client basis; and

(vi) the Operator will promptly pay the balance then remaining to that Non-Operator.⁵

8. The Plant's only purpose is to facilitate the removal and processing of the oil at the McKay SAGD Project. It is designed and intended to remain on the land only as long as the McKay SAGD Project is producing oil.⁶ The Plant is a modular plant that is designed and intended

⁵ CAPL Operating Procedures, Exhibit "D" to the Logan Affidavit, at section 5.05(B) (emphasis added). "Joint Property" is defined as "the Joint Lands, together with all other tangible and intangible property held for the Joint Account at the relevant time, including funds, wells, Production Facilities and other equipment and materials": section 1.01.

⁶ Logan Affidavit at para. 32.

to be movable and transferable to different sites. It is entirely above ground, and consists of tanks, pipe rack modules, pump buildings, and other equipment skids. The equipment that comprises the Plant sits on or is secured to piles, but can be removed without damaging the equipment or lands.⁷

B. The Everest Receivership

9. On April 5, 2023, the Honourable Justice B. B. Johnston of the Court of King’s Bench of Alberta (the “**Court**”) issued an order appointing PricewaterhouseCoopers Inc. LIT as receiver and manager (the “**Everest Receiver**”) of the undertakings, property and assets of Everest pursuant to section 13(2) of the *Judicature Act*, section 99(a) of the *Business Corporations Act*, R.S.A. 2000, c. B-9, and section 106.1 of the *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6.⁸
10. On February 24, 2024, Greenfire (as purchaser) and the Everest Receiver (as vendor) entered into a Purchase and Sale Agreement (the “**PSA**”), pursuant to which Greenfire agreed to purchase Everest’s interests in the McKay SAGD Project, the Plant, and the Farm-In Agreement.⁹ The Court issued an order approving the PSA on March 27, 2024.¹⁰
11. When the transaction contemplated by the PSA closed on or about April 19, 2024, Greenfire acquired Everest’s 95% working interest in the McKay SAGD Project (including the Plant) and became a successor in interest to Everest’s rights under the Farm-In Agreement, including by becoming Operator.¹¹

⁷ Logan Affidavit at paras. 28-31.

⁸ Logan Affidavit at para. 9; Receivership Order, Exhibit “F” to the Logan Affidavit at para. 2.

⁹ Logan Affidavit at para. 10.

¹⁰ Logan Affidavit at para. 11.

¹¹ Logan Affidavit at para. 11.

12. Greenfire registered its Operator's Lien as against Viceroy's interests in the McKay SAGD Project and related assets in the Personal Property Registry of Alberta on May 23, 2024, and later amended its registration on August 13, 2024.¹²

C. The Outstanding Amounts Owning by Viceroy

13. On January 24, 2024, the Everest Receiver delivered a letter to Viceroy demanding payment of amounts then outstanding by Viceroy to Everest under the Farm-In Agreement (the "**January 24 Letter**"). The Everest Receiver estimated that, as of the Everest Receiver's appointment on April 5, 2023, Viceroy owed Everest at least \$102,269.87.¹³
14. On April 25, 2024, after Greenfire purchased Everest's interest in the Plant, Greenfire's counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), delivered a letter to Viceroy demanding payment of additional amounts outstanding by Viceroy to Greenfire under the Farm-In Agreement (the "**April 25 Letter**"). Osler also provided notice to Viceroy that the amount outstanding by Viceroy to Greenfire had by then increased to \$794,075.06 (the "**Outstanding Amounts**"), that the letter constituted a notice of default pursuant to the CAPL Operating Procedures, and that Greenfire intended to take steps to enforce its Operator's Lien.¹⁴ Viceroy did not respond.¹⁵
15. On June 4, 2024, Osler delivered another letter to Viceroy, demanding payment of the Outstanding Amounts under the Farm-In Agreement and providing a Notice of Intention to Enforce Security in accordance with section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), thereby giving notice to Viceroy of Greenfire's intention to take steps to enforce its Operator's Lien (the "**June 4 Letter**").¹⁶ Viceroy again did not respond.¹⁷

¹² Logan Affidavit at paras. 12-13.

¹³ Logan Affidavit at para. 14.

¹⁴ Logan Affidavit at para. 15.

¹⁵ Logan Affidavit at para. 16.

¹⁶ Logan Affidavit at para. 17.

¹⁷ Logan Affidavit at para. 18.

16. On June 18, 2024, Osler delivered another letter to Viceroy (the “**June 18 Letter**”) providing notice pursuant to section 62 of the PPSA that Greenfire proposed to take the collateral secured by the Operator’s Lien—Viceroy’s 5% interest in the Plant (the “**Collateral**”)—in satisfaction of the Outstanding Amounts, if Viceroy did not provide a written notice of objection pursuant to section 62(2) of the PPSA within 15 days of the date of the June 18 Letter.¹⁸
17. Qiping Men, a director of Viceroy, delivered an email to Osler on June 21, 2024 objecting to Greenfire’s proposal pursuant to section 62(2) of the PPSA (the “**June 21 Email**”).¹⁹ Qiping Men also claimed that Viceroy had not received copies of the April 25, June 4, or June 18 Letters, although each was delivered to Viceroy’s registered office.²⁰
18. On June 26, 2024, Qiping Men advised Greenfire (through its counsel) that Viceroy intended to exercise its right to audit the Outstanding Amounts. On July 4, 2024, Greenfire’s counsel responded by email confirming Viceroy’s right to conduct an audit, inquiring who would be conducting the audit, proposing a schedule, and pointing out that the commencement of an audit did not relieve Viceroy from paying the Outstanding Amounts.²¹ After Qiping Men requested the “related calculations with supporting documents for auditing,” Greenfire sent him a link to all joint interest billing documentation on July 15, 2024. Later that day, Qiping Men repeated his request for “supporting documents.” He did not respond to Greenfire’s subsequent requests to provide any specifics as to what may be missing and to provide the information requested to begin the audit.²²

¹⁸ Logan Affidavit at para. 19.

¹⁹ Logan Affidavit at para. 20.

²⁰ Logan Affidavit at para. 21.

²¹ Logan Affidavit at para. 23.

²² Logan Affidavit at paras. 25-27.

19. The Outstanding Amounts will continue to increase as the joint lands and Plant continue to accrue joint operating expenses.²³ As of October 4, 2024, the Outstanding Amounts totalled \$854,684.16.²⁴

PART III - ISSUES

20. The sole issue in this application is whether a receiver should be appointed in respect of the marketing and sale of Viceroy's working interest in the Plant under the PPSA and the *Judicature Act*. In these circumstances, the Court should appoint a receiver because:
- (a) the PPSA applies to the Operator's Lien over the Collateral; and
 - (b) this Honourable Court has the jurisdiction to appoint a receiver under the PPSA, and it is just and convenient to do so.

PART IV - LAW AND ARGUMENT

A. The PPSA Applies to Greenfire's Operator's Lien Over the Collateral

(a) The PPSA Applies to Operator's Liens

21. The PPSA applies, *inter alia*, to "every transaction that in substance creates a security interest," with certain exceptions.²⁵
22. The Operator's Lien represents a "security interest" within the meaning of the PPSA. In *Cansearch Resources Ltd v. Regent Resources Ltd.*, this Court considered the priority of an operator's lien to secure payment of expenses related to the operation of an oil and gas facility. The lien in that case resembled the Operator's Lien at issue here:

Effective from the Effective Date, Operator shall have a lien and charge, which is first and prior to any other lien, charge, mortgage or other security interest, with respect to the Function Unit Participations of each Owner in the Facility and such Owner's share of Facility Products, to secure payment of such Owner's

²³ Logan Affidavit at para. 22.

²⁴ Supplemental Affidavit of Robert Logan, sworn October 4, 2024 at para. 4, Exhibit "B".

²⁵ PPSA, ss. 3(1)(a), 4.

proportionate share of the costs and expenses incurred by Operator for the Joint Account.²⁶

23. The Court concluded that this operator's lien was a "security interest" and therefore subject to the PPSA, reasoning:

[36] In Alberta, the PPSA creates a mandatory statutory priority framework governing specified security interests. This framework overrules certain contractual and property rights: *Gimli Auto Ltd v Canada Campers Inc (Trustee of)*, 1998 ABCA 154 at paras 8-10.

[37] It is not common practice in Alberta to register an operator's lien pursuant to the PPSA. However, registration is both possible and advisable...

[38] Cansearch's Operator's Lien is a consensual and contractual lien created under the Operating Agreement to secure potential future indebtedness. It covers Regent's Ownership Interest, which itself comprises each "separate component of the [Joffre] Facility." As a result, the Operator's Lien may apply to "potentially both freehold and Crown real property interests (both as to surface and mineral rights), and a number of different types of tangible and intangible personal property, all of which together form an economic unit": Leew & Purves-Smith at 300.

[39] Since the Operator's Lien is a consensual and contractual lien, it also qualifies as a security interest under section 3(1) of the PPSA, which governs its priority vis-à-vis other security interests as against the Regent estate...²⁷

24. This reasoning is equally applicable here, bringing the Operator's Lien within the purview of the PPSA.

(b) The PPSA Applies to the Collateral

25. The remedies available under the PPSA, including the appointment of a receiver, are available to Greenfire in relation to the Collateral.
26. Under the PPSA, a "security interest" is defined to include "an interest in goods... that secures payment or performance of an obligation."²⁸ "Goods," in turn, "means tangible personal property" and "includes fixtures."²⁹

²⁶ *Cansearch Resources Ltd v. Regent Resources Ltd.*, [2017 ABQB 535](#) [*Cansearch Resources*] at para. 11.

²⁷ *Cansearch Resources* at paras. 36-39.

²⁸ PPSA, s. 1(1)(tt)(a). This portion of the definition is subject to exceptions relating to sellers who have shipped goods to buyers.

²⁹ PPSA, s. 1(1)(v).

27. The Plant is personal property and therefore falls within the application of the PPSA. This Honourable Court has found that similar large, modular equipment and plants are chattel where (i) they are bolted or welded in order to prevent vibration; (ii) such bolting or welding can be removed without damaging the equipment or land; (iii) and their purpose is to further a business purpose and not for the better use of land.³⁰ This Court ought to similarly find that the Plant is personal property because the Plant's only purpose is to facilitate the removal and processing of the oil at the McKay SAGD Project, and is designed and intended to remain on the land only as long as the McKay SAGD Project is producing oil.³¹ The Plant is a modular plant that is designed and intended to be movable and transferable to different sites. Finally, the equipment that comprises the Plant sits on or is secured to piles, but can be removed without damaging the equipment or lands.³²
28. Furthermore, even if the Plant were not personal property, it would still fall within the definition of "goods" under the PPSA as a "fixture".³³ In the PPSA, "fixture" is defined only as excluding "building materials," which does not apply to the Collateral.³⁴ Fixtures are treated as "goods" for most purposes under the PPSA.³⁵ Both of the remedies engaged here—disposal of collateral on default and the appointment of a receiver—are applicable to "collateral," without differentiation for goods that are fixtures.³⁶ The Collateral is therefore a "good" within the meaning of the PPSA, regardless of whether it is a chattel or a fixture.

³⁰ See *Arctic Transit Mix and Concrete Products Ltd. v. Rolling Mix Concrete (Edmonton) Ltd.*, [1999 CanLII 19079](#) at paras. 2 and 9; *Turismo Industries Ltd. v. Kovacs*, [1976 CanLII 1106](#); *Heathron Developments Ltd. v. Kemp Concrete Products*, [1998 CanLII 6481](#) at para. 10.

³¹ Logan Affidavit at para. 32.

³² Logan Affidavit at paras. 28-31.

³³ PPSA, s. 1(1)(v).

³⁴ PPSA, s. 1(1)(t), (e).

³⁵ The notable exception is the fixture-specific priority regime and duties respecting their removal set out in section 36, which is not relevant to the issues at hand. See Richard H. McLaren, *Secured Transactions in Personal Property in Canada*, 3rd ed. (Toronto: Carswell, 2013) (loose-leaf updated to release 2024-06) at § 17:10; PPSA, s. 36. See also Bruce MacDougall, *Canadian Personal Property Security Law*, 3rd ed. (Toronto: LexisNexis, 2023) at § 4.02[3][i][ii][A].

³⁶ PPSA, ss. 55, 60, 65. "Collateral" is defined as "personal property that is subject to a security interest," and "personal property" is defined to include "goods": PPSA, ss. 1(1)(g), (gg).

29. The parties' conduct with respect to the Collateral has engaged the remedies available under Part 5 of the PPSA. In the June 18 Letter, Greenfire initiated the procedure under section 62 of the PPSA, which provides that "[a]fter default, the secured party may propose to take the collateral in satisfaction of the obligations secured, and shall give a notice of the proposal" to enumerated parties including the debtor.³⁷ By its June 21 Email, Viceroy gave "a written notice of objection" to this proposal as contemplated by section 62(2).³⁸ Section 62(2) prescribes the parties' next steps: if given a such a notice, "the secured party shall dispose of the collateral in accordance with section 60," which provides procedures for the disposal of collateral on default. This application is brought in furtherance of Greenfire's obligations to dispose of the Collateral in accordance with the requirements of section 60 of the PPSA.

B. This Court Should Appoint a Receiver

(a) This Court has Jurisdiction to Appoint a Receiver

30. The Court of King's Bench has jurisdiction to appoint a receiver here under both section 13(2) of the *Judicature Act* and section 65(7) of the PPSA.
31. Section 13(2) of the *Judicature Act* permits this Court to appoint a receiver where it is "just or convenient" to do so:

(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.

32. Section 65(7) of the PPSA also empowers this Court to appoint a receiver:

(7) On the application of any interested person, the Court may

(a) appoint a receiver; ...

33. Once appointed under section 65, the receiver must follow the sale process set out in section 60 of the PPSA unless the Court orders otherwise or the disposition is made in the course

³⁷ PPSA, s. 62(1); Logan Affidavit at para. 19.

³⁸ Logan Affidavit at para. 20.

of carrying on the business of the debtor.³⁹ Section 60 sets out certain requirements for the disposal of collateral, including notice requirements for receivers and public sale and pricing requirements for secured parties purchasing the collateral. The PPSA also provides the court with broad powers to give directions under sections 64 and 65(7).

(b) It is Just and Convenient to Appoint a Receiver

34. The *Judicature Act* provides for the Court appointment of a receiver where it is “just or convenient” to do so.⁴⁰ It is well-established that this Court may consider a wide array of factors in determining whether to appoint a receiver under the *Judicature Act*, including:

- a. whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b. the risk to the security holder, taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor’s assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i. the principle that the appointment of a receiver is extraordinary relief, which should be granted cautiously and sparingly;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its’ duties more efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;

³⁹ PPSA, s. 65(9).

⁴⁰ *Judicature Act*, s. 13(2).

- m. the length of time that a receiver may be in place;
 - n. the cost to the parties;
 - o. the likelihood of maximizing return to the parties;
 - p. the goal of facilitating the duties of the receiver.⁴¹
35. The factors vary in their importance and no one factor is determinative. Courts instead take a contextual approach to these factors.⁴²
36. By contrast, section 65 of the PPSA “is silent... as to what considerations apply in appointment of a receiver.”⁴³ This Court has suggested that “what is relevant pursuant to s. 66 is also relevant to the application to appoint a receiver,” and accordingly “can include questions respecting the good faith of the secured creditor and commercial reasonableness of the proposed appointment as well as questions of equity.”⁴⁴ The PPSA provisions governing the appointment of a receiver, which “simply amplify the broad powers of the court contained in the *Judicature Act*,”⁴⁵ therefore seem to engage a broader set of relevant factors.⁴⁶
37. In circumstances such as these, the key factor under both the *Judicature Act* and the PPSA is that Greenfire is seeking to exercise a right that it otherwise has by virtue of its Operator’s Lien and under the PPSA. Greenfire does not need to appoint a receiver in order to take possession of Viceroy’s interest in the Plant and dispose of it under the CAPL Operating Procedures.⁴⁷ Further, the PPSA grants Greenfire the statutory right to dispose of the

⁴¹ *Law Society of Alberta v. Higgerty*, [2023 ABKB 499](#) at para. 26, citing *Paragon Capital Corporation Ltd v. Merchants & Traders Assurance Co*, [2002 ABQB 430](#) at para. 27 [*Paragon Capital*].

⁴² *Pillar Capital Corp. v. Harmon International Industries Inc.*, [2020 SKQB 19](#) at para. 36; *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, [2022 ONSC 6186](#) [*Canadian Equipment Finance*] at para. 26; *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, [2022 BCSC 136](#) at para. 54.

⁴³ *Priority 1 Security Inc. v. Phasys Limited*, [2006 ABQB 332](#) at para. 16 [*Priority 1 Security*].

⁴⁴ *Priority 1 Security* at paras. 16-17.

⁴⁵ *Canadian Western Bank v. 702348 Alberta Ltd.*, [2009 ABQB 271](#) at para. 28, aff’d on other grounds [2010 ABCA 227](#).

⁴⁶ *Priority 1 Security* at paras. 16-17.

⁴⁷ CAPL Operating Procedures, Exhibit “D” to the Logan Affidavit, at section 5.05(B)(f).

Collateral. This is a right which Greenfire already enjoys under the PPSA even absent an Order of this Court.

38. Another key factor is that Greenfire's application is appropriately limited in scope so as to minimize the impact on Viceroy. Greenfire is not seeking the appointment of a Receiver over all of Viceroy's assets, property and undertaking. Rather, Greenfire is applying for a limited and targeted appointment for a Receiver only to take possession of and manage a sale with respect to Viceroy's 5% interest in the Plant over which Greenfire clearly has security.
39. Section 62(2) of the PPSA stipulates that "the secured party shall dispose of the collateral in accordance with section 60" of the PPSA. Section 60 of the PPSA specifically contemplates the possibility of a purchase of the collateral by the secured party.⁴⁸ Greenfire seeks to conduct the required public sale process under the control of the Receiver as a sales agent because Greenfire also intends to bid on that interest.
40. As a result, Greenfire's application also address the concerns that courts have raised about the appropriateness of appointing a receiver. In *BG International Limited v. Canadian Superior Energy Inc.*, the Court of Appeal cautioned that "the appointment of a receiver is a remedy that should not be lightly granted" and that the Court must "carefully balance the rights of both the applicant and the respondent."⁴⁹ It should be noted that the Court in *BG International* was not considering the appointment of a receiver to manage a sale under s. 60 of the PPSA, but even if these concerns do apply to the current application Greenfire has addressed these concerns by narrowing the scope of this application only to what is necessary to enforce Greenfire's rights under the Operator's Lien and the PPSA. This application does not seek an appointment of a receiver over all of Viceroy's assets.
41. Additional factors relevant under the *Judicature Act* and the PPSA and which support the appointment of a receiver include the following:

⁴⁸ PPSA, s. 60(11).

⁴⁹ *BG International Limited v. Canadian Superior Energy Inc.*, [2009 ABCA 127](#) at paras. 16-17.

- (a) Nature of the property: The proposed receivership would be over a limited ownership interest in property. Viceroy only has a 5% working interest in the Plant, whereas Greenfire has a 95% working interest.⁵⁰
- (b) The Enforcement of Greenfire's Rights under the CAPL: Courts do not regard the appointment of a receiver to be an extraordinary remedy where the applicant is merely seeking to enforce a term of the agreement already made by both parties.⁵¹ This principle ought also to apply here where Greenfire is seeking to enforce its rights under the CAPL Operating Procedures and s. 60 of the PPSA. The Operator's Lien and the PPSA expressly grant Greenfire a right to seize and dispose of Viceroy's interest in the Plant. Greenfire is seeking to appoint a Receiver only to act as a sale agent, and so that Greenfire can realize its rights under the Operator's Lien and the PPSA with appropriate oversight.
- (c) Difficulty enforcing the Operator's Lien and Viceroy's conduct: The Receiver delivered a notice to Viceroy demanding payment of outstanding amounts in the January 24 Letter.⁵² Osler followed with a notice of default under the CAPL Operating Procedures in the April 25 Letter, a Notice of Intention to Enforce Security in accordance with section 244 of the BIA in the June 4 Letter, and a notice of its proposal to take its collateral under section 62 of the PPSA in the June 18 Letter.⁵³ Viceroy's actions have complicated Greenfire's ability to enforce on its collateral. Viceroy has been slow to respond and has often been non-responsive to important communications, impeding Greenfire's efforts by (amongst other things) raising its right to audit but failing to provide specifics to move the process forward (and, importantly, refusing to pay the amounts owed).⁵⁴

⁵⁰ Logan Affidavit at paras. 5, 11.

⁵¹ *Canadian Equipment Finance* at para. 24.

⁵² Logan Affidavit at para. 14.

⁵³ Logan Affidavit at paras. 15-19.

⁵⁴ Logan Affidavit at paras. 15-27.

- (d) Efficiency and commercial reasonableness: The proposed Receiver is experienced and skilled at running a sale process.⁵⁵ Appointing a receiver would also avoid uncertainty and time-consuming challenges based on perceived conflicts of interest that may arise if Greenfire were to bid in its own sale.⁵⁶
 - (e) Maximizing returns to the parties: Appointing a receiver to run the sales process in a fair and transparent manner would ensure that the best price is received for the Collateral.
 - (f) Greenfire's conduct and good faith: While Greenfire could proceed with a sale by exercising its statutory and contractual rights, it is concerned that doing so would lead to actual or apparent conflict. It is therefore seeking the Court appointment of a receiver to run a fair and transparent sales process to avoid any appearance of impropriety.⁵⁷
 - (g) Not essential to establish irreparable harm: Courts have repeatedly confirmed that it is not essential to show irreparable harm as a factor for the appointment of a receiver under the *Judicature Act*,⁵⁸ and there is no authority requiring proof of irreparable harm for the appointment of a receiver to manage a sales process under s. 60 of the PPSA.
42. As a result, the appointment of the Receiver is both “just and convenient” and reflects good faith and commercial reasonableness because it will ensure fairness and transparency, and reduce uncertainty or any appearance or perception of conflict of interest.

PART V - CONCLUSION AND RELIEF SOUGHT

43. For the reasons set out above, the Applicant requests that the Receivership Order be granted.

⁵⁵ Logan Affidavit at paras. 39.

⁵⁶ Logan Affidavit at para. 38.

⁵⁷ Logan Affidavit at para. 38.

⁵⁸ *Paragon Capital* at para. 27.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9TH day of October, 2024.

A handwritten signature in black ink, appearing to read "Randal Van de Mosselaer" or "Stephanie Clark", written in a cursive style.

Randal Van de Mosselaer / Stephanie Clark
Osler Hoskin & Harcourt LLP
Counsel for Greenfire Resources Operating
Corporation

TABLE OF AUTHORITIES

TAB	AUTHORITY
A.	<i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c. B-3
B.	<i>Judicature Act</i> , R.S.A. 2000, c. J-2
C.	<i>Personal Property Security Act</i> , R.S.A. 2000, c. P-7
D.	<i>Arctic Transit Mix and Concrete Products Ltd. v. Rolling Mix Concrete (Edmonton) Ltd.</i> , 1999 CanLII 19079
E.	<i>BG International Limited v. Canadian Superior Energy Inc.</i> , 2009 ABCA 127
F.	<i>Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited</i> , 2022 ONSC 6186
G.	<i>Canadian Western Bank v. 702348 Alberta Ltd.</i> , 2009 ABQB 271 , aff'd 2010 ABCA 227
H.	<i>Cansearch Resources Ltd v. Regent Resources Ltd.</i> , 2017 ABQB 535
I.	<i>Heathron Developments Ltd. v. Kemp Concrete Products</i> , 1998 CanLII 6481
J.	<i>Law Society of Alberta v. Higgerty</i> , 2023 ABKB 499
K.	<i>Pandion Mine Finance Fund LP v. Otso Gold Corp.</i> , 2022 BCSC 136
L.	<i>Paragon Capital Corporation Ltd v. Merchants & Traders Assurance Co</i> , 2002 ABQB 430
M.	<i>Pillar Capital Corp. v. Harmon International Industries Inc.</i> , 2020 SKQB 19
N.	<i>Priority 1 Security Inc. v. Phasys Limited</i> , 2006 ABQB 332
O.	<i>Turismo Industries Ltd. v. Kovacs</i> , 1976 CanLII 1106
P.	Bruce MacDougall, <i>Canadian Personal Property Security Law</i> , 3rd ed. (Toronto: LexisNexis, 2023)
Q.	Richard H. McLaren, <i>Secured Transactions in Personal Property in Canada</i> , 3rd ed. (Toronto: Carswell, 2013) (loose-leaf updated to release 2024-06)