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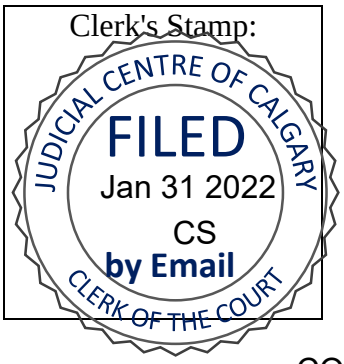

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COURT FILE NUMBER	2201-01016
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ROBUS SERVICES LLC
DEFENDANTS	ROBUS RESOURCES INC. and ERNEST METHOT
DOCUMENT	**BRIEF OF ARGUMENT OF ROBUS SERVICES LLC**

Receivership Application scheduled to be heard on February 8, 2022 at 2:00 pm, before the Honourable Justice Hollins on the Commercial List

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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TABLE OF CONTENTS

Page

I. INTRODUCTION

1. This is the Brief of Law of Robus Services LLC ("**Robus Services**") in support of its application (the "**Application**") to appoint Alvarez & Marsal Canada Inc. ("**A&M**") as the receiver and manager (in such capacity, the "**Receiver**") over all of the current and future assets, undertakings and property (collectively, the "**Property**") of Robus Resources Inc. ("**Robus Resources**");

2. Robus Services extended a loan to Robus Resources pursuant to a Loan Agreement dated February 21, 2020, as amended on December 23, 2020, in the principal amount of $7,000,000.00 (the "**Loan**"). Pursuant to the terms of the Loan, Robus Resources granted debentures, guarantees, and a pledge by Ernest Methot of shares held by him in Robus Resources, as security for the Loan (collectively, the "**Security**").

3. Robus Resources defaulted under the Loan by failing to make payments and provide the required financial information as required by the Loan. As a result, as at June 28, 2021, Robus Resources was indebted to Robus Services for at least $14,986,216.76[1] under the Loan, plus interests and costs, which continue to accrue.

4. Robus Resources is in default of its obligations to Robus Services and has failed to repay amounts owing to Robus Resources under the Loan despite Robus Services' demand. In addition, Robus Services has lost faith in Robus Resources and its management. Further, there is a dispute over the proper management of Robus Resources and the rightful ownership of the shares of Robus Resources Inc., which shares may be subject to the Security of Robus Services.

5. The Security gives Robus Services the right to appoint or apply to this Honourable Court to appoint a receiver and manager over all the Property. Robus Services seeks to enforce its contractual right to appoint a Receiver over Robus Resources, and in addition it is just and convenient to do so in the circumstances.

6. A&M is qualified, prepared, and has consented to act as Receiver.

[1] Unless otherwise stated, all references to currency are to $USD.

II. ISSUE

7. There are two issues in this application, namely:

   (a) should this Honourable Court appoint a receiver over the Property? and

   (b) should the Receiver be empowered with the ability to assign Robus Resources into bankruptcy?

III. ROBUS SERVICES' POSITION

8. The appointment of a receiver over the Property is a contractual remedy available to Robus Services. Robus Services respectfully submits that it is also just and convenient to appoint a Receiver of the Property in the circumstances, and there are no compelling commercial or other reasons why such an order ought not to be made.

IV. FACTUAL BACKGROUND

9. The facts in support of Robus Services' application are set forth in the Affidavit of Robert Brantman, sworn January 27, 2022 (the "**Brantman Affidavit**"). Capitalized terms not otherwise defined herein have the meaning set forth in the Brantman Affidavit.[2]

A. Loan and Security

10. On February 21, 2020, Robus Services extended the Loan to Robus Resources in the amount of $7,000,000.00. The Loan was amended on December 23, 2020, and was secured by the following Security:

   (a) a demand debenture constituting a lien on all of the present and after-acquired property of Robus Resources and its subsidiaries, including a floating charge over all property and a fixed charge over all petroleum property;

   (b) fixed charges registered with Alberta Energy under the *Mines and Minerals Act* (Alberta), against the petroleum property; and

[2] Affidavit of Robert Brantman, sworn January 27, 2022

(c) limited recourse guarantee of Ernest Methot, secured by a pledge by Ernest Methot of all issued and outstanding equity interests held by him in Robus Resources, including a covenant not to sell such equity interests.

B. Default, Acceleration and Demand

11. Robus Resources defaulted under the Loan, including by (i) failing to meet the terms of repayment, and (ii) refusing to provide Robus Services with the necessary monthly financial and operating information. The Loan provides that, upon default by Robus Resources, Robus Services may declare the entire principal amount outstanding under the Loan to be immediately due and payable.

12. Accordingly, as at June 28, 2021, Robus Resources was indebted to Robus Services under the Loan in the principal amount of $14,986,216.76 plus interest, costs, and legal fees, which continue to accrue (the "**Indebtedness**").

13. On or about June 28, 2021, Robus Services issued a notice of default to Robus Resources, confirming that all amounts outstanding under the Loan are immediately due and payable, and demanded payment from Robus Resources in the amount of the Indebtedness. Concurrently therewith, Robus Services delivered to Robus Resources a notice of its intention ("**244 Notice**") to enforce its security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "***BIA***").[3]

14. Robus Resources has failed to pay the Indebtedness, and in addition there are six separate writs of enforcement registered against Robus Resources at the Alberta Personal Property Registry.

C. Assignment of the Loan and Security, and Assignment back to Robus Services

15. On or about August 18, 2021, Robus Services, as seller, and Koor Energy Ltd. ("**Koor**"), as purchaser, entered into a Loan and Security Assignment Agreement whereby Robus Services agreed to sell to Koor all of its right, title, and interest in the Loan, including the indebtedness owing thereunder, and to assign the Security to Koor.

[3] *BIA*, RSC 1985, c B-3 at s 243 (1.1) **[Tab 1]**

16. On or about January 12, 2022, Koor transferred its right, title, and interest in the Loan, the indebtedness thereunder, and the Security, back to Robus Services, thereby restoring Robus Services as the senior secured creditor of Robus Resources.

V. LAW AND ARGUMENT

A. Robus Services is entitled to appoint a receiver over Robus Resources

17. Robus Services satisfied the procedural prerequisites to seeking the appointment of the Receiver when it served the 244 Notice on Robus Resources.[4]

18. Each of section 243 of the *BIA*[5] and section 13(2) of the *Judicature Act*[6] vest this Honourable Court with the authority to appoint a Receiver where it is just and convenient to do so.

19. Robus Services respectfully submits that this Honourable Court should exercise its discretion to appoint A&M as Receiver over the Property, as it is just, convenient, and otherwise appropriate in the circumstances, and would be in accordance with, and an enforcement of, the contractual terms agreed upon by Robus Services and Robus Resources. Additionally, A&M has consented to act as Receiver.

B. Considerations when appointing a Receiver

20. Broadly, the applicable test for appointing a receiver is "comparable to the test for injunctive relief."[7] That is, an applicant bears the onus of proving that there is a serious issue to be tried, that it would suffer irreparable harm without the relief sought, and that the balance of convenience favours granting the relief.[8]

21. However, the strict requirements of the tripartite injunction test may be relaxed where the dictates of fairness are so overwhelming that it would be appropriate to forego compliance with each and every factor.[9] In particular, it is not essential for a creditor to establish irreparable harm where the appointment of a receiver is authorized by the security

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[4] *BIA* at s 243 (1.1). **[Tab 1]**
[5] *BIA* at s 243. **[Tab 1]**
[6] *Judicature Act*¸ RSA 2000, c J-2 at s 13(2). **[Tab 2]**
[7] *Murphy v Cahill*, 2013 ABQB 335 ("***Murphy***") at para 60, citing *Anderson v Hunking*, 2010 ONSC 4008 at para 15. **[Tab 3]**
[8] *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at paras 47–48, 62–64. **[Tab 4]**
[9] *Murphy*, *supra* note 7 at paras 62, 64. **[Tab 3]**

documentation.[10] In such cases, the extraordinary nature of the receivership remedy is attenuated by such a provision.

22. In addition, this Court has affirmed the non-exhaustive list of factors,[11] originally set out by Justice Romaine in *Paragon Capital Corp v Merchants & Traders Assurance Co* ("***Paragon***"), to be considered in determining whether it is appropriate to appoint a receiver:

> 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;
>
> m) the length of time that a receiver may be in place;

[10] *Schendel Management Ltd, Re*, 2019 ABQB 545 ("***Re Schendel***") at para 44, citing *Paragon Capital Corp v Merchants & Traders Assurance Co*, 2002 ABQB 430 at para 27. **[Tab 5]**
[11] *Ibid*.

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.[12]

23. The superior courts of both Alberta and Ontario have waived the need to demonstrate the potential for irreparable harm when faced with express contractual authority to appoint a receiver. In *Kasten Energy Inc v Shamrock Oil & Gas Ltd*, this Honourable Court held:

> The security documentation in the present case authorizes the appointment of a Receiver […] Thus, even if I accept the argument that the Applicant Kasten has not been able to demonstrate irreparable harm, that itself would not be determinative of whether or not a Receiver should be appointed in this matter. It is not essential for a creditor to establish irreparable harm if a receiver is not appointed.[13]

24. Similarly, in *RMB Australia Holdings Ltd v Seafield Resources Ltd*, the Ontario Superior Court of Justice cited a line of Ontario cases affirming this approach, and held that:

> [W]hile the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.[14]

25. The British Columbia Supreme Court also adopted this approach in *Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc.*, holding that the burden on an applicant seeking to appoint a receiver is relaxed where the parties have expressly contemplated the appointment of a receiver in their agreement. The Court then went further, stating that where the remedy is authorized by the security documentation, receivership orders are "granted as a matter of course" and receivers should be appointed as long as there are no "compelling commercial or other reasons why such an order ought not to be made."[15]

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[12] *Paragon Capital Corp v Merchants & Traders Assurance Co*, 2002 ABQB 430. **[Tab 6]**
[13] *Kasten Energy Inc v Shamrock Oil & Gas Ltd*, 2013 ABQB 63 at para 21. **[Tab 7]**
[14] *RMB Australia Holdings Ltd v Seafield Resources Ltd*, 2014 ONSC 5205 at para 29, citing *Elleway Acquisitions Ltd v Cruise Professionals Ltd*, 2013 ONSC 6866 at para 27. **[Tab 8]**
[15] *Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc*, 2012 BCSC 437 at para 14. **[Tab 9]**

26. Having regard to the *Paragon* factors and the express terms of the Security, Robus Services submits that that it is just and convenient to appoint A&M as Receiver over the Property under the circumstances for, among others, the following reasons:

(a) As evidenced by (i) its failure to pay Robus Services, and (ii) six writs registered against it at the Alberta Personal Property Registry, Robus Services has ceased to meet its obligations when they become due and is insolvent;

(b) it is not necessary for Robus Services to demonstrate the existence of irreparable harm if a receiver is not appointed;

(c) it is an express term of the Security that, upon default, one of the remedies available to Robus Services is the appointment of a receiver;[16]

(d) Robus Services has lost faith in Robus Resources and its management, and the ongoing acrimonious litigation is evidence of (i) the difficulty that Robus Services will encounter in dealing with Robus Resources, and (ii) the competing shareholder and management claims involving Robus Resources;[17]

(e) there is a dispute over the ownership of the shares of Robus Resources and the rightful management of Robus Resources, and the resolution of those disputes may be assisted by the appointment of a receiver as a neutral officer of this Court;

(f) the appointment of a receiver is in the best interests of all of Robus Resources' stakeholders;

(g) the balance of convenience supports the appointment of a Receiver; and

(h) there are no compelling commercial or other reasons not to appoint a Receiver.

27. In summary, Robus Resources has failed to meet its liabilities as they become due, and has failed to provide Robus Services with the financial information required under the terms of the Loan.

28. Further, the pleadings in the Robus Resources Litigation detail a breakdown in the relationship between Robus Services, Robus Resources, Mr. Methot, Koor, and Mr.

[16] Brantman Affidavit at para 26.
[17] Brantman Affidavit at para 27 and para 32 and Exhibit "G".

Koorbatoff by alleging oppressive conduct, illegal activity, and bad faith. This has caused Robus Services to lose confidence in Robus Resources' management and has made its operations dysfunctional. A receiver is best positioned to stabilize Robus Resources' management and operation while simultaneously preserving its assets and value.

29. In light of the above factors, and in particular Robus Services' express contractual right to appoint a receiver, Robus Services respectfully submits that it is just and convenient to appoint A&M as the Receiver the Property to maximize recovery for all stakeholders.

C. The Receiver should have the authority to assign Robus Resources into bankruptcy

30. Robus Services' proposed form of Receivership Order would allow the Receiver to assign Robus Resources into bankruptcy. While Alberta's Template Receivership Order does not explicitly grant a receiver the authority to bankrupt a debtor, the explanatory notes provide that:

> There is no specific provision allowing the Receiver to make an assignment in bankruptcy or to consent to the making of a Bankruptcy Order under the BIA. While some case law permits Receivers to take such steps, typically Receivers seek prior Court approval even where the specific power to do so is included in the Order. Bankrupting the debtor may reverse priorities and prejudice or favour certain creditors over others. Bankruptcy is a sufficiently material, substantive and final act that, if a Receiver is empowered to bankrupt the debtor, it should be expressly brought to the Court's attention.[18]

31. In its recent decision in *RBC v Gustin*, the Ontario Superior Court of Justice considered this form of relief. In holding that the receiver could assign the debtor into bankruptcy, Justice Rady stated:

> Further, the Court is empowered to authorize the Receiver to file an assignment in bankruptcy. There is ample authority supporting that conclusion.[19]

32. Justice Rady referenced, among others, the Ontario Court of Justice's earlier decision in *Royal Bank v Sun Squeeze Juices Inc.* ("***Sun Squeeze***"), and the Ontario Superior Court of

[18] Alberta Template Receivership Order Explanatory Notes, January 2019, at 4
[19] *RBC v Gustin*, 2019 ONSC 5370 ("***Gustin***") at para 15. **[Tab 10]**

Justice's decision in *Bank of Montreal v Owen Sound Golf & Country Club Ltd* ("***Owen Sound***").[20]

33. In *Sun Squeeze*, Justice Farley noted that he "[did] not see that there is any dispute that this Court has the power to authorize the Court-appointed [receiver and manager] to either file an assignment in bankruptcy or consent to the Petition." He went on to note that "[c]ourts in Canada have specifically held that the Court has jurisdiction to authorize and direct a Court-appointed [receiver and manager] or liquidator to put a debtor company into bankruptcy." [21]

34. Justice Farley also cited from the Manitoba Court of Appeal's decision in *Brandon Packers Ltd., Re*, stating:

> Must the Court then close its eyes to the facts as reported by its own officer? It is my feeling that no amount of bankruptcy or winding-up legislation can fetter the Court to the extent that it must remain blind to the reality of bankruptcy.
>
> In this case the Court directed its appointee to make an assignment in bankruptcy. It is true the Court might have suggested to a creditor that he launch a petition to have the company declared bankrupt; but this, surely, is asking the Court to shirk its plain responsibility and place that responsibility on some third party. When the affairs of the company are under the jurisdiction of the Court, it must accept and fulfill its duty and give judgment "according to the very right and justice of the case".[22]

35. Similarly, in *Owen Sound*, Justice Brown concluded that a receiver-manager had authority to wind-up a debtor company, confirming that, "[i]t is well settled that a court possesses the power to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order."[23]

36. This issue was also considered by the Alberta Court of Appeal in *Chow v Bresea Resources Ltd*. Although the Court there set aside an order directing the interim receiver-manager to assign the debtor company into bankruptcy, the debtor in that case was not actually insolvent.[24] Additionally, the Court there expressly endorsed *Sun Squeeze*, holding that, in

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[20] *Gustin, ibid* at para 12. **[Tab 10]**
[21] *Royal Bank v Sun Squeeze Juices Inc.*, [1994] OJ No 567 aff'd 28 CBR (3d) 201. **[Tab 11]**
[22] *Brandon Packers Ltd., Re*, 33 DLR (2d) 503 (Man CA), leave to appeal to SCC refused. **[Tab 12]**
[23] *Bank of Montreal v Owen Sound Golf & Country Club Ltd.*, 2012 ONSC 557 at para 7. **[Tab 13]**
[24] *Chow v Bresea Resources Ltd.*, 160 WAC 284, 209 AR 284 ("***Bresea***"). **[Tab 14]**

the appropriate circumstances, the Court has authority to direct that a receiver-manager assign a company into bankruptcy:

> Where a company is insolvent within the meaning of the *Bankruptcy and Insolvency Act*, and is unwilling or incapable of making a voluntary assignment, and there is no creditor qualified or willing to petition the company into bankruptcy, and **where bankruptcy is desirable in order to protect the interests of creditors and shareholders, then it may be proper for a court to make an order placing the affairs of the company under the supervision of a receiver/manager or other officer of the court with directions to assign the company into bankruptcy**.[25] [emphasis added]

37. Here, Robus Resources has defaulted on its obligations under the Loan and the Security, and has ceased to meet its liabilities as they generally become due. Based upon the aforementioned authorities, the Alberta Template Receivership Order and accompanying Explanatory Notes, it is clear that this Court has the authority to empower the Receiver to assign Robus Resources into bankruptcy.

38. Accordingly, Robus Services respectfully submits that, should this Honourable Court appoint the Receiver as its officer, the Receiver would be in the best position to assign Robus Resources into bankruptcy, should the circumstances warrant it.

VI. CONLUSION

39. For the reasons set out above, Robus Services seek the Order, substantially in the form appended as Schedule "A" to the Application in order to maximize value for all of Robus Resources' stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31ST DAY OF JANUARY 2022.

BURNET, DUCKWORTH & PALMER LLP

Per: _____
David LeGeyt

[25] *Bresea*, *ibid*. **[Tab 14]**

BOOK OF AUTHORITIES

Tab	Document
1.	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3
2.	*Judicature Act*, RSA 2000, c J-2
3.	*Murphy v Cahill*, 2013 ABQB 335
4.	*RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311
5.	*Schendel Management Ltd, Re*, 2019 ABQB 545
6.	*Paragon Capital Corp v Merchants & Traders Assurance Co*, 2002 ABQB 430
7.	*Kasten Energy Inc v Shamrock Oil & Gas Ltd*, 2013 ABQB 63
8.	*RMB Australia Holdings Ltd v Seafield Resources Ltd*, 2014 ONSC 5205
9.	*Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc*, 2012 BCSC 437
10.	*RBC v Gustin*, 2019 ONSC 5370
11.	*Royal Bank v Sun Squeeze Juices Inc*., [1994] OJ No 567 aff'd 28 CBR (3d) 201 [No Hyperlink Available]
12.	*Brandon Packers Ltd., Re*, 33 DLR (2d) 503 (Man CA), leave to appeal to SCC refused [No Hyperlink Available]
13.	*Bank of Montreal v Owen Sound Golf & Country Club Ltd*., 2012 ONSC 557
14.	*Chow v Bresea Resources Ltd.*, 160 WAC 284, 209 AR 284