

COURT FILE NUMBER 2401-01422
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF GRIFFON PARTNERS OPERATION CORPORATION, GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., STELLION LIMITED, 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO LIMITED

APPLICANT TAMARACK VALLEY ENERGY LTD.

DOCUMENT **DESK APPLICATION**

WITHOUT NOTICE APPLICATION OF TAMARACK VALLEY ENERGY LTD. FOR SERVICE *EX JURIS* AND SUBSTITUTIONAL SERVICE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT STIKEMAN ELLIOTT LLP
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Matti Lemmens

Lawyer for the Applicant, Tamarack Valley Energy Ltd.

APPLICANT'S SUBMISSIONS THAT THE COURT SHOULD CONSIDER ON THIS APPLICATION:

Remedy Claimed or Sought:

1. The Applicant, Tamarack Valley Energy Ltd. ("**TVE**"), respectfully seeks an order:
 - (a) granting leave to TVE to serve *ex juris* a copy of the Notice for Appointment for Questioning of Jonathan Klesch under Rule 6.8 of the *Alberta Rules of Court* (the "**Notice of Appointment**") upon Mr. Klesch by registered mail or courier at Marylebone Road, Harley House, Penthouse 1, NW15HE, London, United Kingdom (the "**London Address**");
 - (b) for substitutional service permitting TVE to serve Mr. Klesch with the Notice of Appointment by registered mail or courier at the London Address and via email at jk@griffon-partners.com (the "**Klesch Email Address**");

- (c) deeming service under paragraph 1(a) and 1(b) to be good and sufficient service of the Notice of Appointment on Mr. Klesch;
- (d) that upon TVE effecting service on Mr. Klesch of the Notice of Appointment via courier or registered mail at the London Address and by email at the Klesch Email Address, TVE may serve Mr. Klesch with any other documents in or relating to the Action No. 2401-01422 by courier or registered mail at the London Address or by email at the Klesch Email Address, and all such documents shall be deemed received by Mr. Klesch on the date service is effected;
- (e) granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

- 2. TVE is a secured creditor of the debtor Griffon Partners Operation Corporation ("**GPOC**") and is an interested party in the within proceedings before this Honorable Court under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA Proceedings**").
- 3. Mr. Klesch is a director and beneficial shareholder of GPOC, a corporation duly registered in the Province of Alberta.
- 4. Mr. Klesch is also the sole beneficial shareholder of Spicelo Limited ("**Spicelo**"), which is a debtor party to the *CCAA Proceedings*. Spicelo is a corporation incorporated under the laws of Cyprus and extra-provincially registered in Alberta.
- 5. On March 12, 2024, TVE filed an application returnable on March 26, 2024 before the Honourable Justice J.J. Gill seeking, *inter alia*:
 - (a) an order directing that pursuant to the doctrine of marshalling, GPOC's senior secured creditors, Trafigura Canada Limited and Signal Alpha C4 Limited (collectively, the "**Lenders**"), must first realize upon certain shares pledged by Spicelo in satisfaction of debts owing by GPOC in priority to any proceeds from the sale of GPOC's assets through a sale and investment solicitation process in the *CCAA Proceedings*; and
 - (b) a declaration that Spicelo is not entitled to subrogate to the Lenders' security position as against GPOC in priority to TVE(the "**TVE Application**").

6. Mr. Klesch is a necessary and proper party to be examined in the TVE Application due to his role as director and beneficial shareholder of GPOC and sole beneficial shareholder of Spicelo, and his role in negotiating the loan agreements between, *inter alia*, TVE, GPOC and/or the Lenders
7. Further, a real and substantial connection exists between Mr. Klesch and the subject matter of the TVE Application and the *CCAA Proceedings* as:
 - (a) The TVE Application relates to loan agreements between, *inter alia*, TVE, GPOC and/or the Lenders to which the parties agreed:
 - (i) would be governed by the laws of the Province of Alberta; and
 - (ii) to attorn to the non-exclusive jurisdiction of the Courts of the Province of Alberta;
 - (b) GPOC and Spicelo are corporations registered in the Province of Alberta;
 - (c) The TVE Application is brought within the ongoing *CCAA Proceedings* commenced by, *inter alia*, GPOC and Spicelo.
8. Spicelo's articles of incorporation and other corporate records indicate that Mr. Klesch maintains the London Address.
9. Further, in email correspondence with TVE and in emails sent by counsel for GPOC and Spicelo in the *CCAA Proceedings*, Mr. Klesch has sent and received emails at the Klesch Email Address, including with a copy of the Notice of Appointment and TVE Application.
10. TVE submits that the proposed service of the Notice of Appointment on Mr. Klesch via registered mail or courier and email is likely to be brought to his attention.
11. TVE further submits that effecting service of the Notice of Appointment in a timely manner is required in order to ensure the transcripts from Mr. Klesch's examination can be filed in advance of the hearing of the TVE Application.

Material or evidence to be used in Support of this Application:

12. Affidavit of Kira Lyseng, sworn on March 13, 2024.

Applicable Rules:

13. The *Alberta Rules of Court*, Alta Reg. 124/2010, Rules 6.8, 6.15 to 6.20, 11.25(2) and (3), and 11.34.

Applicable Acts and Regulations:

14. None.

Any Irregularity Complained of or Objection Relied On:

15. None.

How this application is proposed to be heard or considered:

16. By desk application.