

Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**TRANSCRIPT BRIEF
CROSS-EXAMINATION OF DENNIS MARK MCEWAN
HELD OCTOBER 12, 2021**

Date: October 14, 2021

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C.	Letter from the Applicant's counsel dated October 12, 2021
D.	Letter to the Applicant's counsel dated October 12, 2021

TAB A

In the Matter of a Plan of Compromise or Arrangement of McEwan Enterprises Inc

DENNIS MCEWAN
on Tuesday, October 12, 2021



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Toronto, Ontario M5K 1A1

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2	Court File No. CV-21-00669445-00CL		2		PAGE
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6	IN THE MATTER OF THE COMPANIES' CREDITORS		6		
7	ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS		7	The following list of undertakings, advisements	
8	AMENDED		8	and refusals is meant as a guide only for the	
9			9	assistance of counsel and no other purpose.	
10	AND IN THE MATTER OF A PLAN OF COMPROMISE OR		10		
11	ARRANGEMENT OF MCEWAN ENTERPRISES INC.		11	INDEX OF UNDERTAKINGS	
12	-----		12	The questions/requests undertaken are noted by	
13	--- This is the Cross-examination of DENNIS		13	U/T and appear on the following page/line: None.	
14	MARK MCEWAN upon his affidavit sworn on 1st		14		
15	October 2021, taken via Neesons, a Veritext		15	INDEX OF ADVISEMENTS	
16	Company's virtual platform, on the 12th day of		16	The questions/requests taken under advisement	
17	October, 2021.		17	are noted by a U/A and appear on the following	
18	-----		18	page/line: 12/19; 22/19; 27/24.	
19			19		
20			20	INDEX OF REFUSALS	
21			21	The questions/requests refused are noted by R/F	
22			22	and appear on the following page/line: 18/6;	
23			23	18/17; 18/24; 19/15; 19/24; 23/15; 25/19; 27/11;	
24			24	29/3.	
25			25		
1	(All via virtual platform)	Page 2	1	INDEX OF EXHIBITS	Page 4
2	A P P E A R A N C E S:		2	NO./DESCRIPTION	PAGE
3	Peter Ruby Esq., for the Applicant		3	None.	
4	Robert Chadwick Esq.,		4		
5	Caroline Descours, Esq.		5		
6	Trish Barrett, Esq.		6		
7			7		
8	Steve Graff, Esq., for First Capital		8		
9	Damien Lu, Esq., Holdings(Ontario)		9		
10	Corporation		10		
11			11		
12	Also present:		12		
13	Greg Karpel,		13		
14	Representative of Monitor		14		
15			15		
16	Sean Zweig,		16		
17	Counsel for Monitor, Alvarez & Canada Inc.		17		
18			18		
19	Kip Aneja,		19		
20	CFO of McEwan Enterprises Inc.		20		
21			21		
22	Chathura Wirithamulla,		22		
23	McEwan Enterprises, Finance.		23		
24			24		
25	Reported by: Leila Heckert, CVR, RCP-M		25		

<p style="text-align: right;">Page 5</p> <p>1 -- Upon commencing at 9:15 A.M.</p> <p>2 REPORTER'S NOTE: Whereupon the</p> <p>3 following was read to all participants:</p> <p>4 THE REPORTER: Counsel, as you all</p> <p>5 know, because we are using a virtual connection,</p> <p>6 everyone is going to have to be more conscious</p> <p>7 than ever of not speaking over each other.</p> <p>8 If I cannot hear the end of a question</p> <p>9 or the beginning of an answer, you are going to</p> <p>10 have a very poor record.</p> <p>11 If I have to consistently interrupt</p> <p>12 because I cannot hear or understand something</p> <p>13 that is said, you will not have a good</p> <p>14 examination flow.</p> <p>15 If there is an objection, I must be</p> <p>16 able to hear it and know who is objecting.</p> <p>17 If I do have to interrupt, please be</p> <p>18 patient and understand my goal is to provide you</p> <p>19 with a perfect record of these proceedings.</p> <p>20 Please move your papers and/or legal</p> <p>21 pads away from your laptop and/or phone so there</p> <p>22 is no ambient noise.</p> <p>23 From time to time we've noticed the</p> <p>24 audio can be affected, and if so, we may need to</p> <p>25 stop the proceedings and wait a moment for the</p>	<p style="text-align: right;">Page 7</p> <p>1 difference is that as with the undertakings and</p> <p>2 the answers to questions provided apply, and</p> <p>3 then the only issue that I think we concur that</p> <p>4 would not be the same is the refusals, and so</p> <p>5 the questions that were refused at that point in</p> <p>6 time, I think you've indicated may or may not be</p> <p>7 refused at this particular time. Is that all a</p> <p>8 fair summary?</p> <p>9 MR. CHADWICK: So I'd phrase it a</p> <p>10 little bit differently, and I think there's one</p> <p>11 element that you probably inadvertently left</p> <p>12 out. So our position is that we have no</p> <p>13 objection to your using the transcript from last</p> <p>14 week for the purpose of the sale approval</p> <p>15 motion, same as applies to the answers to</p> <p>16 undertakings and the answers provided in respect</p> <p>17 of questions taken under advisement together</p> <p>18 with the supplementary answers were provided in</p> <p>19 the same chart where Mr. McEwan added a few</p> <p>20 thoughts, and it's all contained in the same</p> <p>21 document that you received at the same time, and</p> <p>22 with respect to the refusals, our position is we</p> <p>23 refused on the basis of what was relevant to the</p> <p>24 initial application, we weren't doing it in</p> <p>25 respect of the approval motion because you said</p>
<p style="text-align: right;">Page 6</p> <p>1 audio to improve, either by reconnecting or</p> <p>2 asking that everyone use the conference call</p> <p>3 number if you're using computer audio.</p> <p>4 Would the witness please identify</p> <p>5 himself and spell your first and last name?</p> <p>6 THE WITNESS: DENNIS MARK MCEWAN.</p> <p>7 THE REPORTER: Our witness today is</p> <p>8 DENNIS MARK MCEWAN. If there are any questions</p> <p>9 about the witness' identity, would counsel</p> <p>10 please advise on the record now?</p> <p>11 (No objections.)</p> <p>12 THE REPORTER: Hearing no objection,</p> <p>13 counsel, are you ready for me to affirm the</p> <p>14 witness?</p> <p>15 DENNIS MARK MCEWAN: AFFIRMED.</p> <p>16 CROSS-EXAMINATION BY MR. GRAFF:</p> <p>17 Q. Does it make sense, even though I</p> <p>18 think we understand each other, Peter, just</p> <p>19 insofar as what our plan is. So for the record,</p> <p>20 I think what we've agreed is that the transcript</p> <p>21 that arose from the examination conducted on</p> <p>22 Mr. McEwan's affidavit of September 27th would</p> <p>23 stand as a transcript of this examination as</p> <p>24 well, obviously for the purpose of avoiding</p> <p>25 unnecessary redundancy, and that the only</p>	<p style="text-align: right;">Page 8</p> <p>1 you weren't cross-examining in respect of the</p> <p>2 approval motion, and so you should feel free to</p> <p>3 ask different questions or the same questions</p> <p>4 that we refused and we'll deal with them one at</p> <p>5 a time.</p> <p>6 MR. GRAFF: Perfect. That's great. I</p> <p>7 think we are ad idem. Thank you for that,</p> <p>8 Mr. Ruby.</p> <p>9 BY MR. GRAFF:</p> <p>10 Q. Mr. McEwan, I don't think I'll be</p> <p>11 very long with you today, and I know you have</p> <p>12 other things you'd rather be dealing with, so</p> <p>13 let me get right into it. And you have affirmed</p> <p>14 today. You confirm that the evidence you are</p> <p>15 giving is the truth, the whole truth; is that</p> <p>16 correct?</p> <p>17 A. That is correct, yes.</p> <p>18 Q. Thank you. And as you heard us</p> <p>19 doing our lawyer talk, today's examination is on</p> <p>20 your affidavit sworn on October 1st, 2021, and I</p> <p>21 don't know that you have that handy. I may or</p> <p>22 may not refer to it, so, if necessary, we can</p> <p>23 pull it up if you do not have it handy.</p> <p>24 Let me start by asking you, sir, when</p> <p>25 was it that you first engaged or met with</p>

<p style="text-align: right;">Page 9</p> <p>1 Goodmans concerning the filing or restructuring 2 possibilities that McEwan Enterprises might have 3 to consider?</p> <p>4 A. I would say approximately 60 days 5 ago, you know, all initial conversations with 6 First Capital were with myself, and then 7 subsequently with Bill Gregson. And when we 8 weren't getting anywhere, we brought Goodman on 9 for counsel.</p> <p>10 4 Q. Can you do your best to look as 11 to when that initial engagement took place, when 12 those initial communications took place?</p> <p>13 A. I would have to reference back 14 and get that for you.</p> <p>15 5 Q. Yes, if you could, that would be 16 helpful.</p> <p>17 MR. CHADWICK: Mr. Graff, just to help 18 you. Maybe I'll be able to do that while we do 19 our examination, I can go back and check and 20 give you a more specific --</p> <p>21 MR. GRAFF: Yes. Sure. That would be 22 helpful.</p> <p>23 BY MR. GRAFF:</p> <p>24 6 Q. And I'm not asking you for the 25 specific advice that was given, but the way that</p>	<p style="text-align: right;">Page 11</p> <p>1 it out there, my understanding of the answer 2 just given by Mr. McEwan is that originally the 3 engagement was for a consideration of the First 4 Capital lease and perhaps where the negotiations 5 might go with that. And I'm assuming at some 6 point in time thereafter, the nature of the 7 mandate that you engaged Goodmans for changed 8 from being just a consideration of beliefs to 9 the possibility of a restructuring transaction.</p> <p>10 MR. RUBY: I think, Mr. Graff, when 11 you go back and read the transcript, you will 12 find that that wasn't Mr. McEwan's evidence.</p> <p>13 MR. GRAFF: Okay.</p> <p>14 MR. CHADWICK: And maybe I can help 15 you, Mr. Graff. I want to try to be efficient 16 and helpful to you, I also want to be factually 17 correct.</p> <p>18 MR. GRAFF: Yes.</p> <p>19 MR. CHADWICK: As is outlined in the 20 materials, the company engaged counsel to review 21 all the strategic alternatives, and so we were 22 engaged to deal with the company, the situation 23 the company was facing, and to discuss strategic 24 alternatives which include, as you would know, 25 includes financing, and it includes whether you</p>
<p style="text-align: right;">Page 10</p> <p>1 you just characterized it, your initial 2 communications really were to address the 3 ongoing negotiation or impasse, perhaps, as 4 between First Capital and McEwan, correct, 5 concerning a go-forward lease arrangement; is 6 that fair?</p> <p>7 A. Are you talking prior to engaging 8 Goodman?</p> <p>9 7 Q. No. When you first engaged 10 Goodmans, was that the purpose, was to consider 11 the negotiation on the lease with First Capital?</p> <p>12 MR. CHADWICK: I think you are asking 13 him for a legal --</p> <p>14 MR. RUBY: Yes, so --</p> <p>15 MR. GRAFF: No. I'm just asking him 16 what the purpose of his engagement of Goodmans 17 was at first instance. That's it.</p> <p>18 MR. RUBY: I don't think you are 19 entitled to that. That's privileged. We will 20 give you the date when he engaged us.</p> <p>21 MR. GRAFF: Okay. Maybe if you could 22 also consider providing me with information as 23 to what that mandate was for, and then I guess, 24 I understand if you have to refuse it, refuse 25 it. We can deal with it. But let me just put</p>	<p style="text-align: right;">Page 12</p> <p>1 would run a sales process or a third party sales 2 process or not, and includes equity, it includes 3 with how you deal with a broad nature of 4 stakeholders. This was not limited to First 5 Capital. This was limited to making sure that 6 the company could look at its strategic 7 alternatives.</p> <p>8 MR. GRAFF: Okay.</p> <p>9 BY MR. GRAFF:</p> <p>10 8 Q. And maybe you can tell me, sir, 11 also, when you had your first communication or 12 when your counsel had first communications with 13 the Monitor?</p> <p>14 MR. RUBY: We will take that under 15 advisement, unless you know, Mr. McEwan, sitting 16 here.</p> <p>17 THE WITNESS: I don't know the exact 18 date.</p> <p>19 U/A MR. GRAFF: We'll take it under 20 advisement.</p> <p>21 MR. CHADWICK: And again, as my 22 earlier comment, Mr. Graff, we can probably get 23 you that date before we're done here today.</p> <p>24 MR. GRAFF: Sure. Perfect. That's 25 great.</p>

<p>1 BY MR. GRAFF: Page 13 2 9 Q. Now, I know we've had some 3 discussions about this from our earlier 4 examination. I just want to make sure I'm 5 understanding it correctly. 6 The impression that I have is that you 7 consider all supplies to the business to be 8 critical lenders; is that correct? 9 A. That is correct. 10 10 Q. And accordingly, the fact that 11 you considered them that, you had been paying 12 all the obligations to those suppliers that 13 arose prior to the date of the filing; is that 14 right? 15 A. That is correct. 16 11 Q. And when those payments are being 17 made, are they being reviewed by the Monitor, 18 the pre-filing payments, so the obligations -- 19 sorry, let me be clear. 20 The obligations that arose prior to 21 your filing on September 28th, whenever you're 22 making a payment in respect of those amounts, do 23 you or one of your staff go to the Monitor and 24 ask for confirmation about the payment? 25 A. I would have to defer to counsel</p>	<p>1 accessories. Is that all fair, those are all Page 15 2 included in there, right? 3 A. That's correct, yes. 4 MR. CHADWICK: Just to help you on 5 your earlier comment, again, trying to be 6 efficient. As you know, and we dealt with this 7 before the court, all of the payments require 8 the consent of the Monitor, and the Monitor is 9 reviewing and those payments with the company. 10 Mr. McEwan is not involved in the day-to-day 11 review of each of the supplier payments. There 12 is a finance department at the company that has 13 been dealing with the Monitor directly in 14 connection with that. And if there's any 15 questions, I'm sure the Monitor could answer 16 firsthand for you. 17 BY MR. GRAFF: 18 15 Q. Mr. McEwan, are you aware of 19 whether any amount owing for an obligation that 20 accrued prior to the 28th of September was not 21 paid or has not been paid? I know your evidence 22 is that they've all been paid, but do you know 23 of any that have not been? 24 A. Not to my knowledge, no. 25 MR. CHADWICK: And sorry to keep</p>
<p>1 on that. Page 14 2 12 Q. I want to understand that 3 process. And, sir, I take it that the reason 4 why all of these obligations are considered to 5 be critical, including the pre-filing ones, is 6 because the intent was to continue to do 7 business with those same suppliers after the 8 transaction is consummated; is that right? 9 A. That would be correct. These are 10 long-standing relationships I had with 11 suppliers, and they're very important to me and 12 the (inaudible) -- 13 13 Q. I understand. 14 MR. RUBY: Sorry. Mr. McEwan, I don't 15 know if your last comment came through. You 16 said "and" something. 17 THE WITNESS: And they're very 18 important to the company, and they're very 19 valuable long-standing relationships. 20 BY MR. GRAFF: 21 14 Q. Understood. Thank you. I know 22 that I'm going to sound like a simpleton when I 23 make this comment, but that would be food 24 suppliers, linen suppliers, obviously suppliers 25 of grocery type items and grocery packing</p>	<p>1 interrupting, Mr. Graff, the evidence is that Page 16 2 they have not all been paid, that they will be 3 paid in the ordinary course. And so although 4 some of those are still outstanding depending, 5 some of them may have 60-day terms, some of them 6 may have 45-day terms. And so the intention is 7 that they will be paid in the normal course. I 8 would be surprised that everybody is paid as it 9 exists today, but the intention is that it's 10 been very clear that they will be paid in the 11 ordinary course. 12 MR. GRAFF: Understood. Thanks, 13 Mr. Chadwick. Thank you, sir. 14 BY MR. GRAFF: 15 16 Q. Now, going to some of the 16 questions that I asked you that were refused 17 from your last examination. Are you aware of 18 any business plans that have been prepared for 19 the year 2021 or for the year 2022? 20 A. No, I am not. 21 17 Q. Would that be something that you 22 would be involved in? 23 A. Yes, it would. 24 18 Q. So you are confirming for me that 25 there is no such initiative or effort to prepare</p>

<p style="text-align: right;">Page 17</p> <p>1 those plans at all happening within Mark McEwan 2 Enterprises organization, correct, because you 3 would -- 4 A. At that time, the answer is yes, 5 to that. 6 19 Q. And what about now, are there 7 efforts that are now being made to develop 8 projections and plans for the latter part of 9 2021 and 2022? 10 A. Nothing -- nothing formal. We're 11 looking to stabilize the company at this point 12 in time. 13 20 Q. Is anything in writing? 14 A. Nothing in writing. 15 21 Q. And I am assuming the same answer 16 goes with respect to projected cash flows that 17 you are not aware of any that have been prepared 18 in respect of the latter part of 2021 or for the 19 year 2022; is that right? 20 A. That is correct. 21 22 Q. And I'm assuming those wouldn't 22 be done for you by Fairfax or any related 23 Fairfax entity, correct? 24 A. That is correct. We would do 25 that internally.</p>	<p style="text-align: right;">Page 19</p> <p>1 26 Q. And I guess, does the refusal - 2 just to make this more simple - does the refusal 3 relate to any management, employment, or other 4 compensation arrangement to which Mr. McEwan or 5 a holding company to which he is -- of which he 6 is the controller, is that the same answer to 7 request for any compensation arrangement with 8 any of those entities? 9 MR. RUBY: Yes. Same -- 10 BY MR. GRAFF: 11 27 Q. I didn't articulate that well. 12 But you are still refusing production of any 13 employment or management or other compensation 14 arrangements? 15 R/F MR. RUBY: Well, with Mr. McEwan or 16 personal holding company, yes. 17 BY MR. GRAFF: 18 28 Q. And does the same go with any 19 party related to Mr. McEwan, whether it be his 20 son, Eric, or his wife, Roxanne? 21 MR. RUBY: If you ask about family 22 members? 23 MR. GRAFF: Yes. 24 R/F MR. RUBY: Same basis. It's not 25 relevant, confidential, and personal</p>
<p style="text-align: right;">Page 18</p> <p>1 23 Q. Thank you. For what relevance it 2 has, I think I had asked you for the contract 3 relating to the Good Food arrangement and that 4 had been refused. 5 Is that available to be produced? 6 R/F MR. RUBY: No. 7 MR. GRAFF: Sorry. Was it was a no? 8 MR. RUBY: No. 9 BY MR. GRAFF: 10 24 Q. And on our last examination, I 11 did ask you, Mr. McEwan, about various 12 compensation arrangements. 13 Could I ask you to produce a copy of 14 the employment agreement that was originally 15 part of the shareholders' agreement from August 16 12th, 2015? 17 R/F MR. RUBY: So that's refused. It's 18 not relevant. It's confidential and it also 19 involves personal information. 20 BY MR. GRAFF: 21 25 Q. Okay. So even if we were to 22 arrange for it to be produced on a confidential 23 basis, it still a refusal? 24 R/F MR. RUBY: Correct. 25 BY MR. GRAFF:</p>	<p style="text-align: right;">Page 20</p> <p>1 information. 2 MR. CHADWICK: And to assist you, 3 Mr. Graff, as we understand it, there is that 4 information, we have relied to the Monitor as to 5 the compensation of Mark McEwan and his son who 6 is involved in the business, Eric, so that 7 information has been provided to the Monitor so 8 they can make sure that it is, kind of, market, 9 and any concerns and my understanding is that 10 they will deal with those issues either directly 11 with you or your client because you raised it, 12 or they'll address in the Monitor's report. But 13 that information has been available, as you can 14 appreciate, is sensitive but we want to make 15 sure that everyone has the right information 16 with respect to the motion. 17 MR. RUBY: And you'll remember, 18 Mr. Graff, that in fact in KSV's affidavit that 19 you delivered last night, it quotes from answers 20 provided by the Monitor to your client -- 21 MR. GRAFF: I'm aware. 22 MR. RUBY: -- about that compensation 23 being market, so that's -- 24 MR. GRAFF: Yes. 25 MR. RUBY: -- obviously known to your</p>

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<p>1 client.</p> <p>2 MR. GRAFF: Yes. Understood.</p> <p>3 BY MR. GRAFF:</p> <p>4 29 Q. And, I guess, the same request</p> <p>5 applies to any arrangement that may exist</p> <p>6 between yourself, Mr. McEwan, a holding company</p> <p>7 or any party related to you with the partnership</p> <p>8 that manages the ONE Restaurant?</p> <p>9 MR. RUBY: Sorry. I'm not --</p> <p>10 MR. CHADWICK: Mr. Graff, I think if</p> <p>11 you asked the witness whether there is any</p> <p>12 agreement with the partnership and compensation</p> <p>13 to himself, then he can answer that question.</p> <p>14 MR. GRAFF: Sure. I was just trying</p> <p>15 to expedite it because, again, it was a refusal</p> <p>16 from last time.</p> <p>17 BY MR. GRAFF:</p> <p>18 30 Q. But, Mr. McEwan, do you or</p> <p>19 anybody with whom you are related have any kind</p> <p>20 of compensation arrangement with the partnership</p> <p>21 of the ONE Restaurant?</p> <p>22 A. Nothing other than the original</p> <p>23 agreement we had that we signed back in '07.</p> <p>24 31 Q. And has that agreement -- that</p> <p>25 agreement, I assume, can be produced or has been</p>	<p>1 BY MR. GRAFF:</p> <p>2 33 Q. Yes. And, obviously, it goes</p> <p>3 without saying, I'm only looking for any</p> <p>4 material amendment, verbal or otherwise that may</p> <p>5 have changed the understanding of the</p> <p>6 arrangement. And I haven't gone back to the</p> <p>7 shareholders' agreement to look at what all the</p> <p>8 exhibits were, or the attachments were to it. I</p> <p>9 know we've talked about the employment</p> <p>10 agreement, I think I had asked you to produce</p> <p>11 the other exhibits or attachments to that</p> <p>12 agreement.</p> <p>13 Can those now be produced or is that</p> <p>14 still refused?</p> <p>15 R/F MR. RUBY: No. It's refused, but on a</p> <p>16 slightly different basis for the purposes of</p> <p>17 this upcoming motion, the shareholders'</p> <p>18 agreement isn't actually relevant at all.</p> <p>19 BY MR. GRAFF:</p> <p>20 34 Q. Okay. As it relates to</p> <p>21 shareholders -- I think we've lost Mr. -- oh,</p> <p>22 no. Mr. McEwan's still there. There he is.</p> <p>23 MR. RUBY: And, Mr. Graff, just to be</p> <p>24 clear, the question about the shareholders'</p> <p>25 agreement is the shareholders' agreement for</p>
Page 22	Page 24
<p>1 produced to the Monitor; is that correct?</p> <p>2 MR. CHADWICK: I have to go back and</p> <p>3 check on that. But if it hadn't provided to the</p> <p>4 Monitor. We didn't provide it to the Monitor.</p> <p>5 It's their co-owner's agreement.</p> <p>6 MR. GRAFF: And the same goes for the</p> <p>7 co-owner's agreement as well, of course.</p> <p>8 MR. CHADWICK: It's the same.</p> <p>9 MR. RUBY: It's the same.</p> <p>10 BY MR. GRAFF:</p> <p>11 32 Q. Oh, it is the same document,</p> <p>12 okay. So we'd like to see a copy of that. If</p> <p>13 your answer is no, but it's been provided to the</p> <p>14 Monitor, that's fine. And we'd also like to see</p> <p>15 any amendments to that agreement that are in</p> <p>16 writing, or an understanding of any amendments</p> <p>17 that have been made verbally, if that can be</p> <p>18 provided.</p> <p>19 U/A MR. RUBY: We'll take that under</p> <p>20 advisement. We will have to go and look.</p> <p>21 MR. GRAFF: Okay. Thanks.</p> <p>22 MR. RUBY: And just to be clear, I'm</p> <p>23 not sure about what verbal amendments would be,</p> <p>24 but we will go back to the transcript and we'll</p> <p>25 try and sort that out.</p>	<p>1 McEwan Enterprises, that's what you are asking</p> <p>2 about?</p> <p>3 MR. GRAFF: Yes.</p> <p>4 MR. RUBY: Okay. Thank you.</p> <p>5 MR. GRAFF: Yes. Sorry. I'm looking</p> <p>6 at, obviously, the charts that were prepared and</p> <p>7 I'm not elaborating on the specific docs,</p> <p>8 because I think we've discussed them</p> <p>9 sufficiently in these documents. But if you</p> <p>10 need me to clarify what I'm referring to, please</p> <p>11 make that request, for sure.</p> <p>12 MR. RUBY: Thank you.</p> <p>13 BY MR. GRAFF:</p> <p>14 35 Q. In terms of the capitalization of</p> <p>15 McEwan Enterprises, Mr. McEwan, can you tell me</p> <p>16 what consideration was paid by you for the</p> <p>17 issuance of shares in McEwan Enterprises?</p> <p>18 MR. RUBY: Sorry. Maybe you can help</p> <p>19 me understand how that's relevant to the</p> <p>20 proposed transaction motion?</p> <p>21 MR. GRAFF: Well, I'm just trying to</p> <p>22 understand the capital structure, what was paid</p> <p>23 by each of Mr. McEwan and Fairfax for the shares</p> <p>24 of McEwan Enterprises, and similarly whether</p> <p>25 those contributions have -- are continued to be</p>

	Page 25		Page 27
1 reflected as equity contributions.		1 record, but to the extent that there are	
2 MR. RUBY: All right, Mr. McEwan, can		2 specific questions that you or your client or	
3 you --		3 KSV require, you will see the form of	
4 BY MR. GRAFF:		4 confidentiality agreement contemplates both	
5 36 Q. To the best of your knowledge, do		5 advisors, professional advice only and	
6 you know whether you specifically paid for		6 principals and it contemplates that that	
7 shares that were issued to you in the capital		7 information would not be made public.	
8 McEwan Enterprises?		8 MR. GRAFF: Understood. It's not so	
9 A. I did not specifically pay for		9 much a refusal as much as a confidentiality	
10 shares. They're allocated to me.		10 issue.	
11 37 Q. Thank you. And I understand at		11 R/F MR. RUBY: No. From a formal point of	
12 as it relates to Fairfax that there were certain		12 view, it's a refusal. But we are willing to	
13 payments made by them for the shares of McEwan		13 provide things that you are not entitled to in	
14 Enterprises that they currently hold; is that		14 an appropriate way that protects the information	
15 correct?		15 and safeguards the interest of the company while	
16 A. That is correct.		16 giving you some transparency.	
17 38 Q. And do you know what those		17 BY MR. GRAFF:	
18 amounts were?		18 40 Q. Okay. I had asked you previously	
19 R/F MR. CHADWICK: I think we refused that		19 about the production of a directors and officers	
20 previously.		20 insurance policy, and I believe that was	
21 MR. GRAFF: I'm not sure whether you		21 refused.	
22 refused it, or I may not have even asked it.		22 Is that something that can now be	
23 MR. CHADWICK: No. You did ask it.		23 provided?	
24 Maybe you asked it in different words, but the		24 U/A MR. RUBY: I'd have to admit, I don't	
25 consideration, the number of shares as it		25 think I've turned my mind to that one since the	
1 relates to the acquisition, we said that it was	Page 26	1 last time. So maybe we'll take that one under	Page 28
2 not relevant.		2 advisement.	
3 MR. GRAFF: And is that still your		3 BY MR. GRAFF:	
4 position?		4 41 Q. Sure. Thank you. And I believe	
5 MR. RUBY: Yes.		5 on the last examination, I had asked you for a	
6 BY MR. GRAFF:		6 copy of any agreement that had been completed	
7 39 Q. I think I also asked for the,		7 with Cadillac Fairview.	
8 what I call nonconsolidated financial statements		8 Has an agreement of that nature now	
9 for each individual separate operation that		9 been concluded with Cadillac Fairview?	
10 forms part of McEwan Enterprises for the years		10 MR. RUBY: I think that's a question	
11 2019, 2020 and 2021. Is that an undertaking you		11 for Mr. McEwan.	
12 are now prepared to provide?		12 BY MR. GRAFF:	
13 MR. RUBY: So we provided the Yonge		13 42 Q. Yes, that is --	
14 and Bloor unconsolidated figures. For the		14 A. We are still in negotiation with	
15 balance, your client is still not entitled to		15 Cadillac Fairview. Nothing has been papered at	
16 it, but we are prepared to have an off-line		16 this time. But discussions are still in	
17 discussion after your client signed an NDA, and		17 process.	
18 we provided a form of NDA and are just waiting		18 43 Q. Do you expect the draft of an	
19 for comments from you. So we think you're not		19 agreement to be exchanged shortly?	
20 entitled to it, but we are open to a discussion		20 A. We have a call with them this	
21 under a confi.		21 week, and hopefully things will progress.	
22 MR. GRAFF: Okay.		22 44 Q. Just give me one minute if I may.	
23 MR. CHADWICK: As we talked to you		23 I think in the prior exam, I had also asked for	
24 about before, Mr. Graff, that's the kind of		24 copies of the lease agreement for Cadillac	
25 information that we would not want on the public		25 Fairview to be produced and that was refused.	

<p style="text-align: right;">Page 29</p> <p>1 Is that something on a confidential basis, at 2 least, that could be made available? 3 R/F MR. RUBY: No. It's refused on the 4 basis that it's not relevant. 5 MR. GRAFF: Okay. 6 MR. RUBY: I should note it's also 7 confidential. 8 MR. GRAFF: From everybody. Okay. 9 Thanks. Those are my questions, and subject to 10 any that arise from my review of the 11 productions, thanks for your time today, 12 Mr. McEwan. 13 THE WITNESS: Thank you, Mr. Graff. 14 MR. CHADWICK: Maybe just before we 15 break, just see if we have any redirect. Maybe 16 we can just take a five-minute break and then 17 come back. 18 MR. RUBY: Yes. So if everybody just 19 wants to stay logged in but go on mute, and up 20 to you whether you turn off your video. We will 21 be back in five minutes. 22 -- RECESS TAKEN AT 9:45 A.M. 23 -- RESUME AT 9:51 A.M. 24 RE-EXAMINATION BY MR. RUBY: 25 45 Q. Mr. McEwan?</p>	<p style="text-align: right;">Page 31</p> <p>1 it rather organically through the office. 2 48 Q. Thank you. Those are my 3 questions. 4 MR. CHADWICK: Mr. Graff, you asked 5 about the Goodmans engagement letter, 6 arrangements. I think we were retained in the 7 early part of June. I think I just probably 8 quickly look, but I think in the early part of 9 June that we would have been retained. We were 10 retained to look at all strategic alternatives 11 for the company, obviously including debt, 12 equity sales process and otherwise. 13 MR. GRAFF: Okay. 14 MR. RUBY: So, Mr. Graff, I know it's 15 not strictly the correct way to do it, but if 16 you had any formal -- sorry, any follow-up 17 questions on the questions I just asked 18 Mr. McEwan, we'd be -- 19 MR. GRAFF: No. 20 MR. RUBY: -- happy if you had any -- 21 MR. GRAFF: Nothing. 22 MR. RUBY: -- to go ahead. 23 MR. GRAFF: Nothing. Thank you. 24 MR. RUBY: Okay. 25 MR. GRAFF: Great. Thank you,</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Yes. 2 46 Q. Mr. Graff asked you about 3 projections and I just want to make sure that we 4 haven't gotten hung up on any terminology issue. 5 So can you help us by explaining in the ordinary 6 course of business, can you describe any 7 financial estimates the company makes about 8 future earnings for staffing, percentage rent or 9 other purposes? 10 A. We constantly monitor it, but we 11 don't have a formal program going forward. 12 Where we have been with the pandemic and the 13 uncertainty of what forward projections would 14 even look like, we try to rely on day-to-day 15 operations and monitoring just percentages of 16 categories and just sensible oversight of the 17 company. Not knowing where we are going is the 18 biggest challenge for us, so we've not done 19 anything in a formal way. 20 47 Q. Okay. I don't want to get stuck 21 on formality. On an informal basis, are there 22 any, let's call it, look-ahead exercises that 23 you do to look ahead at things like finances, 24 traffic, staff planning? 25 A. Not in a formal way. I -- we do</p>	<p style="text-align: right;">Page 32</p> <p>1 Mr. McEwan. Appreciate your time and we will be 2 back in touch. 3 MR. RUBY: Thank you, Mr. Graff. 4 (Whereupon this examination concludes 5 at 9:55 A.M.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<p style="text-align: right;">Page 33</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>I, LEILA HECKERT, CVR, Certified Verbatim Reporter, certify;</p> <p>That the foregoing proceedings were taken before me at the time and place therein set forth at which time the witness was put under oath by me;</p> <p>That the testimony of the witness and all objections made at the time of the examination were recorded digitally by me and were thereafter transcribed;</p> <p>That the foregoing is a true and accurate transcript of my shorthand notes so taken. Dated this 12th day of October 2021.</p> <p style="text-align: center;"> _____</p> <p>PER: LEILA HECKERT CERTIFIED VERBATIM REPORTER</p>	

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TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

**UNDER ADVISEMENTS GIVEN DURING THE CROSS-EXAMINATION
OF DENNIS MARK MCEWAN, ON HIS AFFIDAVIT DELIVERED THE 1ST DAY OF OCTOBER
2021, CONDUCTED VIA VIDEOCONFERENCE ON OCTOBER 12, 2021**

No.	Q. #	PG. #	<u>Under AdviseMENTS</u>	<u>Response</u>
1.	8	12	To provide when Mr. McEwan or when Mr. McEwan's counsel first communicated with the Monitor	
2.	32	22	To provide a copy of the compensation arrangement with the partnership of the ONE restaurant, and any material amendments to that agreement in writing or an understanding of any amendments that have been made verbally	
3.	40	27	To provide a copy of the directors and officers insurance policy	Subsequently refused (please see letter at Tab C)

**REFUSALS GIVEN DURING THE CROSS-EXAMINATION
OF DENNIS MARK MCEWAN, ON HIS AFFIDAVIT DELIVERED THE 1ST DAY OF OCTOBER
2021, CONDUCTED VIA VIDEOCONFERENCE ON OCTOBER 12, 2021**

No.	Q. #	PG. #	<u>Refusals</u>	<u>Response</u>
1.	23	18	Refusal re producing the contract relating to the Good Food arrangement	
2.	24 and 25	18	Refusal re producing a copy of the employment agreement that was originally part of the shareholders' agreement from August 12, 2015, even if it were to be produced on a confidential basis	
3.	27	19	Refusal re production of any employment, management or other compensation arrangements to which Mr. McEwan or a holding company of which he is the controller	
4.	28	19	Refusal re production of any employment, management, or other compensation arrangements to which a party is related to Mr. McEwan	
5.	33	23	Refusal re producing exhibits or attachments to the shareholders' agreement	
6.	38	25	Refusal re the consideration paid by Fairfax for the shares of McEwan Enterprises that Fairfax currently holds	
7.	39	27	Refusal re providing a copy of the nonconsolidated financial statements for each individual operation that forms part of McEwan Enterprises for the years 2019, 2020 and 2021	
8.	44	29	Refusal re providing copies of the lease agreement for Cadillac Fairview	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Applicant

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

REFUSALS AND UNDERTAKINGS CHART

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TAB C



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October 12, 2021

Via Email

Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, Canada
M5J 2T9

Attention: Mr. Steven Graff

Dear Mr. Graff:

**Re: McEwan Enterprises Inc.
Court File No. CV-21-00669445-00CL**

We have several matters to address with you before the hearing of the Applicant's transaction approval motion hearing.

1. Today, when you cross-examined Mr. McEwan, you requested the Applicant's D&O insurance policies. We have now considered that request and it is refused because of its irrelevance to the pending motion.
2. It is not clear to us if you are proceeding with any motion with respect to questions refused on the cross-examinations of Mr. McEwan. As we have already advised you, it is not acceptable for such a refusals motion to be heard on October 15 with the transaction approval motion. Also, we prefer not to have the Chief Justice troubled by procedural issues tomorrow and are prepared to not proceed altogether with the booked appointment, including with respect to Mr. Robins, if your client determines not to move on the refusals. Please let us know today your position. If the parties are not going to proceed tomorrow, it would be best to let the court office know today before 4:30pm so the Chief Justice is quickly made aware we will not be drawing on his time.
3. You served the affidavit of Mr. Kofman last night. It is replete with inadmissible, uninformed and unreliable opinions. We ask that your client voluntarily withdraw it so that the parties' and Court's time need not be spent dealing with this document. Please advise today of your position. If you do not withdraw that affidavit or otherwise inform us that you will not be relying on it, we will request that the Court deal with its flaws at the October 15 hearing.

4. We have asked you several times about an agreed timetable for this matter and you have not responded. Please get back to us about both agreeing to serving on October 13 our respective factums for the transaction approval motion.

Finally, we are advised that the timing of the hearing on October 15, 2021 will be 9:00-10:30am, a 45 minute break, and then 11:15am-1:15pm.

Yours truly,

Goodmans LLP



Peter Ruby

Copy: J. Nemers and D. Liu, Aird & Berlis
R. Chadwick and C. Descours, Goodmans
S. Zweig, Bennett Jones
J. Nevsky and G. Karpel, Alvarez and Marsal

7206608

TAB D



Steven L. Graff
Direct: 416.865.7726
E-mail: sgraff@airdberlis.com

October 12, 2021

BY EMAIL

Mr. Peter Ruby
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 3S7

Dear Mr. Ruby:

**RE: In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,
as Amended, and In the Matter of a Plan of Compromise or Arrangement of
McEwan Enterprises Inc.
Court File No.: CV-21-00669445-00CL
Our File No.: 164277**

Thank you for your letter of today's date, to which we respond as follows:

With respect to items 1 and 2 of your letter, we agree that undertakings and refusals motions on the Commercial List ought to be avoided if at all possible, and that counsel are encouraged by the Court to resolve such motions. Accordingly, we will agree that, in lieu of the parties moving on refusals, the Chief Justice should be permitted to draw the appropriate adverse inferences at the substantive motion should His Honour be of the view that certain refused questions/productions ought to have been answered/produced.

We trust you agree with this reasonable approach, and as you are no longer seeking to examine Mr. Robins, we trust you will advise the Court prior to 4 p.m. today that tomorrow's attendance should be vacated. To the extent you do not agree with this approach, please advise us before 4 p.m. today, as unfortunately that will mean that we should be appearing before His Honour to address this matter.

With respect to item 3 of your letter, we disagree that Mr. Kofman's affidavit is improper, or that any portion of it ought to be struck or withdrawn. We agree that any submissions with respect to it may be made at the October 15 hearing.

With respect to item 4 of your letter, we are agreeable to receiving the Monitor's Report in respect of your motion and the factum in support of your motion by no later than tomorrow (October 13). Should we wish to file a supplemental factum after receiving these materials, we will do so promptly, and, in any event, by no later than the following day.

Page 2

Yours truly,

AIRD & BERLIS LLP

Per

A handwritten signature in blue ink, appearing to be "Steven L. Graff", written over a horizontal line.

Steven L. Graff
SG\cj

c.c. Jeremy Nemers & Damian Lu – Aird & Berlis LLP
Robert J. Chadwick & Caroline Descours – Goodmans LLP
Sean Zweig – Bennett Jones LLP
Josh Nevsky & Greg Karpel – Alvarez & Marsal Holdings, LLC

AIRD BERLIS

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MCEWAN ENTERPRISES INC.

Applicant

Court File No. CV-21-00669445-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

TRANSCRIPT BRIEF

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