



COURT OF APPEAL OF ALBERTA

FORM AP-1

[RULE 14.8 AND 14.12]

REGISTRAR'S STAMP

COURT OF APPEAL FILE NO.:

2101-0004AC

TRIAL COURT FILE NO.:

25-2679073

REGISTRY OFFICE

CALGARY

APPLICANTS/CROSS RESPONDENTS:

**GREENFIRE HANGINGSTONE OPERATING CORPORATION
AND GREENFIRE OIL & GAS LTD.**

STATUS ON APPEAL:

RESPONDENT

RESPONDENTS/CROSS-APPLICANTS:

**BEHROKH AZARIAN, HOMAYOUN HODAI, MANDANA
REZAIE, MEHRAN POOLADI-DARVISH, MEYSAM OVAICI,
FIROOZ ABBASZADEH, MEHRAN JOOZDANI, LAYLA AMJADI,
MEER TAHER SHABANI-RAD, ZAHRA AHMADI-NAGHDEHI,
AFSHIN SHAMELI, MARYAM MOHSEN ZADEH, PARHAM
MINOO, HALEH PEIRAVI, MOHAMMAD AHADZADEH
ARDEBILI, RAMIN JALALPOOR, ELHAM VAKILI AZGHANDI,
TARIQ MAHMOOD ROSHAN, AMIN JALALPOOR, FAISAL
KHAN, POONAM DHARMANI AND ALI NILFOROUSH**

STATUS ON APPEAL:

APPELLANTS

NON-PARTY

**ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS
PROPOSAL TRUST OF GREENFIRE OIL & GAS LTD. AND
GREENFIRE HANGINGSTONE OPERATING CORPORATION**

STATUS ON APPEAL:

RESPONDENT

DOCUMENT

CIVIL NOTICE OF APPEAL

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

Douglas S. Nishimura
Field LLP
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Calgary, AB T2P 0X8
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File No. 72185-1

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: December 17, 2020

Date entered: December 18, 2020

Date served: December 21, 2020

Official neutral citation of reasons for decision, if any: **N/A**

2. Indicate where the matter originated:

☒ Court of Queen's Bench

Judicial Centre: Calgary

Justice: The Honourable Justice D. B. Nixon

On appeal from a Queen's Bench Master or Provincial Court Judge?:

Yes ☒ No

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

☒ Permission not required, or in the alternative, if necessary, to be sought concurrently with the filing of this Notice of Appeal

4. Portion being appealed (Rule 14.12(2)(c)):

☒ Whole, or

Only specific parts (if specific part, indicate which part):

5. Provide a brief description of the issues:

- a. This Appeal relates to an order for interim financing (the "**Interim Financing Order**") in a proposal proceeding under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 (the "**BIA**") of Greenfire Hangingstone Operating Corporation ("**OpCo**") and guaranteed by Greenfire Oil & Gas Ltd. ("**HoldCo**", together with OpCo, "**Greenfire**") and a sale approval and vesting order (the "**SAVO**") vesting all of the assets, property and undertakings (the "**Assets**") of OpCo in a newly incorporated purchaser, Greenfire Acquisition Company Ltd. (the "**Purchaser**") and approving the purchase and sale agreement (the "**APA**") between OpCo and the Purchaser. The APA required funds provided under the Interim Financing be used to satisfy the purchase price. The purchase price under the APA was set forth or even calculated and there was no evidence as to the value of the Assets being purchased or that the value proposed under the APA was reasonable in the circumstances;

- b. There was no court approved sales process for the Assets, nor was there evidence of a prior sales process, and Greenfire only pursued a transaction with the Purchaser. The APA was approved primarily in order to obtain interim financing and the test for approval of a sale of all of the Assets of OpCo as set out in section 65.13 of the *Bankruptcy and Insolvency Act* was not satisfied in the circumstances. The test set out in section 65.13 of the BIA for the approval of a sale of assets was not properly applied by Justice Nixon and could not be satisfied on the evidence before Justice Nixon;
- c. The proceeds from the interim financing were being used not just for the preservation of the Assets and to pay restructuring costs but also to fund the purchase of the Assets. The interim financing term sheet also required, as conditions, that Greenfire enter into a marketing agreement with the interim lender and that the APA be entered into and approved by the Court;
- d. Justice Nixon in granting the Interim Financing Order and the SAVO relied upon facts that were not in evidence before him, he made inferences on the position of certain of the parties that was not on the record before him, he made inferences from the facts that were before him that were not warranted and that would rise to the level of a palpable and overriding error;
- e. Justice Nixon incorrectly applied sections 50.6 and 65.13 of BIA to approve the Interim Financing and grant the SAVO;
- f. Justice Nixon incorrectly stated that the factual circumstances allowed him to amend or ignore the principles set out in the case of *Royal Bank of Canada v Soundair*, [1991] CanLII 2727 (ON CA) ("*Soundair*"); and
- g. **Provide a brief description of the relief claimed:**
The Appellants seek an order reversing the Interim Financing Order and the SAVO.
- h. **Is this appeal required to be dealt with as a fast track appeal?** (Rule 14.14)
Yes ☒ No
- i. **Does this appeal involve the custody, access, parenting or support of a child?** (Rule 14.14(2)(b))
Yes ☒ No
- j. **Will an application be made to expedite this appeal?**
☒ Yes No
- k. **Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate?** (Rule 14.60)
Yes ☒ No
- l. **Could this matter be decided without oral argument?** (Rule 14.32(2))
Yes ☒ No
- m. **Are there any restricted access orders or statutory provisions that affect the privacy of this file?** (Rules 6.29, 14.12(2)(e), 14.83)
☒ Yes No

If yes, provide details: The Order Appealed from contains a sealing provision.

n. **List respondent(s) or counsel for the respondent(s), with contact information:**

Burnet Duckworth & Palmer LLP
Suite 2400, 525-8th Ave SW Calgary, AB T2P 1G1
Attn: Ryan Algar and David LeGeyt

o. **Attachments (check as applicable)**

☒ Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.