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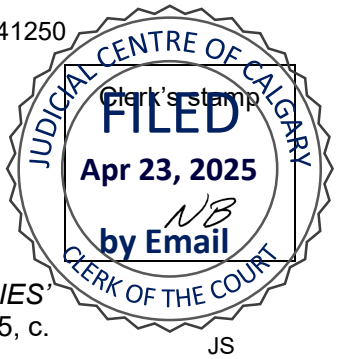

JS
April 28, 2025

COURT FILE NUMBER	2401-17986
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	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 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.
APPLICANT	HIGH PARK SHOPS INC.
RESONDENTS	420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED, and 420 DISPENSARIES LTD.
DOCUMENT	**BENCH BRIEF OF THE APPLICANTS**
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I. INTRODUCTION

1. This Bench Brief is submitted on behalf of 420 Investments Ltd. ("**420 Parent**"), 420 Premium Markets Ltd. ("**420 Premium**"), Green Rock Cannabis (EC 1) Limited ("**GRC**"), and 420 Dispensaries Ltd. ("**420 Dispensaries**") (collectively, "**FOUR20**"), in support of FOUR20's Application filed and served on April 22, 2025 (the "**Application**"). This brief is confined to the relief sought in that Application.

2. The Application arises from the recent discovery that High Park Shops Inc. ("**High Park**") purchased two creditor claims shortly before the scheduled vote on FOUR20's Plan of Arrangement (the "**Plan**"), namely those of McCarthy Tétrault LLP (the "**McCarthy Claim**") and Meadowlands Development Corporation (the "**Meadowlands Claim**"). These purchases were only revealed to FOUR20 and the Monitor on April 9, 2025, the last day on which Affected Creditors could submit their proxies for voting on the Plan, and two days prior to the Creditors' Meeting originally scheduled for April 11, 2025, when High Park submitted "no" proxies with respect to both the McCarthy Claim and Meadowlands Claim. Together, these two claims give High Park an effective veto on FOUR20's Plan, despite the fact that all other Affected Creditors approve of the Plan and have submitted "yes" proxies.

3. This attempt to derail the Plan is consistent with the aggressive approach that High Park has taken throughout FOUR20's insolvency proceedings. As has been clear throughout these proceedings, High Park's ultimate objective is to gain control over, and ultimately terminate, the ongoing litigation between 420 Parent and High Park (the "**Litigation**"), wherein High Park is facing potential damages in excess of $100 million. First, High Park failed in its bid during FOUR20's Sales and Investment Solicitation Process ("**SISP**") wherein it attempted to purchase the Litigation. High Park subsequently failed in its effort to oppose FOUR20's application for the Creditors' Meeting Order and have the SISP re-opened so that it could once again attempt to purchase the Litigation. Now, High Park seeks to inappropriately vote down the Plan by purchasing the claims of Affected Creditors. All of these actions have significantly delayed FOUR20's insolvency proceedings and have driven up professional fees to the detriment of both FOUR20 and all other creditors.

4. The fact that High Park's actions are contrary to the interests of the broader stakeholder group was explicitly recognized by Justice Bourque in his March 27, 2025 decision (the "**Justice Bourque Decision**") and corresponding Order (the "**Order**"), which held that High Park is not an Affected Creditor entitled to vote on the Plan. In the Justice Bourque Decision, Justice Bourque explicitly noted that High Park's proposed course of action best served High Park,

and that other creditors would be prejudiced if High Park were allowed to vote on the Plan as the result would be a "foregone conclusion". Nevertheless, High Park has attempted to circumvent this clear and express ruling from Justice Bourque by purchasing the McCarthy Claim and Meadowlands Claim.

5. High Park is not a typical creditor. Its goal is not economic recovery in the within proceedings, but rather to defeat the Litigation via the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36 ("**CCAA**"), process, rather than facing an adjudication of the Litigation on the merits in the appropriate Court forum. High Park's conduct constitutes an improper purpose and subverts the objectives of the CCAA. The CCAA exists to facilitate fair and viable restructurings that may compromise certain legal rights in a manner that serves the broader interests of all stakeholders. High Park's actions are antithetical to this purpose.

6. Furthermore, following investigation by the Monitor, it was revealed that High Park's acquisition of the McCarthy Claim occurred in November 2024, but High Park failed to disclose this acquisition until the day that proxies were due. Not only was this not disclosed to FOUR20, but it also was not disclosed to all other Affected Creditors, from the Monitor, and from Justice Bourque at the hearing that took place in March to consider the application of High Park to resume the SISP and FOUR20's application to call the Creditors Meeting (the "**March Hearing**"). At the March Hearing, High Park made submissions with respect to the prejudice it would face if it were not permitted to vote on the Plan and yet, for reasons unknown to the Applicants, failed to disclose that it would nonetheless be able to vote through the McCarthy Claim that it had already acquired. High Park's failure to disclose its acquisition of the McCarthy Claim is extremely prejudicial to FOUR20 and all other creditors; had FOUR20 known in November 2024 that High Park had acquired a significant portion of FOUR20's unsecured debt and would invariably be voting "no" on any plan of arrangement, FOUR20 could have taken different actions in its restructuring efforts. Instead, High Park waited until the eve of the Creditors' Meeting to blindside FOUR20 and all other stakeholders. These actions are clearly in not in good faith and should not be countenanced by this Court.

7. As such, and as will be further demonstrated below, it is clear from the caselaw that High Park should not be permitted to vote on the Plan, whether directly or through an assigned claim, due to its improper purpose, lack of good faith and its prior exclusion by Court order.

8. Ultimately, FOUR20's Plan provides the most viable path to a swift and successful emergence from the within CCAA proceedings, to the benefit of all stakeholders. Approval of the Plan will allow FOUR20 to refocus on its operations and prosecute the Litigation in the appropriate

forum. Importantly, FOUR20 understands that all other Affected Creditors remain in support of the Plan.

9. FOUR20 is currently cash-flow positive and well-positioned to fund the Litigation through existing resources or, if necessary, through a new litigation funding agreement on commercially reasonable terms. Once outside of CCAA protection, FOUR20 is fully capable of continuing as a solvent, cash-flow positive business. High Park, by contrast, is merely a contingent creditor. In fact, this was reinforced by the Alberta Court of Appeal on April 17, 2025, when it issued a unanimous decision from the bench upholding a decision from Justice Feasby rendered on October 16, 2024, wherein Justice Feasby overturned an earlier ruling granting High Park summary judgment (the "**Summary Judgment Decision**") with respect to its counterclaim in the Litigation (the "**Counterclaim**"). It was primarily High Park's aggressive enforcement actions following the Summary Judgment Decision that forced FOUR20 to seek creditor protection. However, as a result of both Justice Feasby's ruling and the latest ruling from the Alberta Court of Appeal, it is clear that there are no amounts currently owing to High Park from FOUR20 and any claim that High Park may have is contingent on the outcome of the Litigation.

10. Throughout these proceedings, FOUR20 has acted in good faith, as consistently noted in the Monitor's Reports. FOUR20 is a small, Alberta-based company operating 25 retail locations and employing over 200 individuals. In stark contrast, High Park is owned by Tilray Brands Inc. ("**Tilray**"), a multinational, publicly traded corporation incorporated in Delaware with assets exceeding $4 billion. Tilray is leveraging its significant resources in an attempt to manipulate the process, exert pressure on the Monitor and FOUR20, and circumvent fair proceedings.

11. High Park's and Tilray's sole objective in these proceedings is to extinguish their $100+ million liability in the Litigation without ever facing trial. Such abuse of the CCAA process must not be permitted.

II. STATEMENT OF FACTS

12. The Applicants rely on the facts as set forth in the Affidavit of Scott Morrow, Chief Executive Officer of FOUR20, sworn on April 17, 2025 (the, "**April 17 Affidavit**"), as well as the Affidavit of Scott Morrow, sworn on March 12, 2025 (the "**March 12 Affidavit**") and the Affidavit of Scott Morrow sworn on March 4, 2025 in support of the FOUR20 Application (the "**March 4 Affidavit**", collectively with the, April 17 Affidavit and the March 12 Affidavit, the "**Morrow**

Affidavits"). Capitalized terms not defined herein have the meanings given to them in the Morrow Affidavits.

III. ISSUES

13. The issues to be determined by this Court are as follows:

(a) Should High Park be disallowed from voting on the Plan?

(b) Should costs of this Application be awarded to FOUR20 from High Park?

IV. LAW AND ARGUMENT

A. High Park should be disallowed from voting on the Plan in any capacity

i. Court's Discretion to Disallow Creditor Voting Where Creditor has Improper Purpose

14. Section 11 of the CCAA sets out the broad discretionary powers of the Court in supervising proceedings under the Act. It provides that, where an application is made in respect of a debtor company, "the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any person or without notice as it may see fit, make any order it considers appropriate in the circumstances".[1]

15. In *9354-9186 Québec Inc v Callidus Capital Corp* ("***Callidus***"), the Supreme Court of Canada confirmed that although a creditor is generally entitled to vote on a plan of arrangement that affects its rights, this right is not absolute. Section 11 of the CCAA grants supervising judges the discretion to bar a creditor from voting where that creditor is acting for an improper purpose.[2]

16. The Supreme Court in *Callidus* emphasized that "[o]versight of the plan, voting, and approval process falls squarely within the supervising judge's purview," and there is no provision in the CCAA suggesting that a creditor holds an inalienable right to vote on a plan that cannot be limited by a proper exercise of judicial discretion.[3]

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[1] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, Section 11 [CCAA] **[TAB 1]**.
[2] *9354-9186 Québec Inc v Callidus Capital Corp,* 2020 SCC 10 at para 56 [*Callidus*] **[TAB 2]**.
[3] *Callidus* at para 69 **[TAB 2]**.

17. The Court further clarified that such discretion is appropriate where a party is acting in a manner that undermines the objectives of the statute.[4] In exercising this discretion, the judge must engage in a context-specific analysis that balances the various purposes of the CCAA, including the protection of stakeholder interests, good faith participation, and the facilitation of a fair restructuring process.[5]

18. The case law is clear; where the circumstances warrant it, this Court has the authority and to bar a creditor from voting, particularly where its actions are inconsistent with the objectives of the CCAA.[6]

19. In *Economopoulos, Re*("***Economopoulos***"), the Ontario Court considered the weight of a creditor's objections to a proposal where that creditor had acquired a third-party claim and was concurrently involved in civil litigation with the debtor.[7] The Court noted that, although it was not strictly necessary to consider motive in dismissing the creditor's objections, the self-interested nature of the creditor's actions, rooted in its litigation with the debtor, further diminished the weight of its opposition. [8]

20. The Court's reasoning in *Economopoulos* underscores the principle that where a creditor's motivations are tied to external litigation objectives rather than the broader interests of creditors, those motives are improper and can justify judicial intervention.

21. In *Laserworks Computer Services Inc, Re* ("***Laserworks***"), the Nova Scotia Court of Appeal dealt with analogous issues under the *Bankruptcy and Insolvency Act* ("***BIA***"). There, a competitor, Datarite, acquired the claims of 18 creditors and used them to vote down a proposal made by the debtor, Laserworks.[9] The Court concluded that Datarite's motive was to bankrupt Laserworks and eliminate it as a competitor, which amounted to an improper purpose.[10]

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[4] *Callidus* at para 75 **[TAB 2]**.
[5] *Callidus* at para 76 **[TAB 2]**.
[6] *Callidus* at para 69 **[TAB 2]**.
[7] *Economopoulos,* 2000 CarswellOnt 3778, 20 CBR (4th) 71 at paras 3-5 [*Economopoulos*] **[TAB 3].**
[8] *Economopoulos,* at para 33 **[TAB 3].**
[9] *Laserworks Computer Services Inc, Re*, 1998 NSCA 42 at para 2 [*Laserworks*] **[TAB 4]**.
[10] *Laserworks* at para 81 **[TAB 4]**.

22. The Court provided insight into the improper nature of Datarite's actions, specifically stating the following:

> 18 While this case does not involve a bankruptcy petition, it does involve the placing of Laserworks into bankruptcy. In my view, it would be wrong to allow Datarite to do in the proposal process what it cannot do by petition. Datarite's intention was to place Laserworks in bankruptcy. The motive was to remove a competitor. That motive reveals an improper purpose. The court will not allow to be done by the back door what cannot be done by the front.
>
> 19 By entering into this arrangement with the numbered company the eighteen creditors have tainted themselves and become embroiled in the improper purpose of Datarite. Their votes cannot stand. If Laserworks has the right to be free of this type of interference the Court must be able to fashion a remedy. This court does have the inherent jurisdiction to supervise the bankruptcy process and consequently the conduct of creditors where that conduct constitutes an abuse of the provisions of the BIA. While creditors can certainly vote in their own best interest, they may not collude with a third party to place a debtor in bankruptcy for an improper purpose. Such activity lacks commercial morality and offends the integrity of the bankruptcy process.
>
> […]
>
> 65 It is undeniable that the appellant caused injury to the debtor not negligently but deliberately. The debtor made its proposal to avoid bankruptcy; bankruptcy therefore must have been seen by Laserworks as a more injurious alternative than acceptance of the proposal by the creditors. Laserworks had the heavy burden of persuading its creditors that their best interests lay in approving the proposal; it did not have the impossible burden of dissuading a financially stronger competitor bent on using the provisions of the BIA to destroy it as a competitor. The appellant derailed the proposal procedure to force the debtor into bankruptcy. Using bankruptcy to cause injury, thereby eliminating the debtor as an entity capable of competing in the marketplace, is abusive of the purpose of the BIA. It does not qualify as "the orderly and fair distribution of (its) property." Annihilation of an individual business or a company may be an unfortunate consequence of a bankruptcy, an unavoidable side-effect, but it is not the purpose of the BIA. Use of the Act to accomplish such an objective is in my view so abusive of the purpose of the legislation as to engage the supervisory jurisdiction of the courts under s. 187(9). It is a substantial injustice to be remedied.
>
> (emphasis added) [11]

23. The Court concluded that using the *BIA* as a tool to eliminate a competitor constitutes a collateral purpose, namely, one unrelated to the fair and orderly distribution of assets and thus warranted judicial intervention to disallow the votes. [12]

24. The *Laserworks* approach was subsequently endorsed by the Alberta Court of Appeal in *Promax Energy Inc v Lorne H. Reed & Associates Ltd*, confirming that the doctrine of improper

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[11] *Laserworks* at paras 18-19, and 65 **[TAB 4]**.

[12] *Laserworks* at paras 54 and 81 **[TAB 4]**.

purpose applies in Alberta and supports the exercise of judicial discretion where creditor conduct undermines the legislative objectives of restructuring statutes.[13]

25. In *12178711 Canada Inc v Wilks Brothers, LLC* ("***Calfrac***"), the Alberta Court of Appeal considered the actions of a competing creditor under the *Canada Business Corporations Act* ("***CBCA***"), in the context of a recapitalization plan.[14] Wilks Brothers, a competitor to Calfrac, held 20% of Calfrac shares, and had acquired 50% of Calfrac's Second Lien Notes in an attempt to block the recapitalization.[15] The chambers judge granted an order approving the plan and, in doing so, considered the "intentions and motivations" of Wilks Brothers in opposing the transaction.

26. Although the proceedings in *Calfrac* were under the *CBCA*, not the *CCAA*, the Court gave significant weight to the motivations of Wilks Brothers. Justice Paperny found that the appellant's intent to force a Chapter 11 filing demonstrated that it was not acting as a *bona fide* creditor, but rather as a competitor pursuing a collateral agenda. [16]

27. In reaching this conclusion, the Court relied on *Callidus*, affirming that "where a stakeholder is voting for a purpose collateral to the intention of the applicable legislation, its votes can be disregarded." [17] This principle, firmly rooted in the *CCAA* context, provides further authority for disregarding High Park's votes in the present matter.

28. The Alberta Court of Appeal also affirmed that the *CBCA, BIA,* and *CCAA* all share a common objective: "facilitating a restructuring that compromises certain legal rights of stakeholders in a manner that is fair having regard to the broader goal — a restructured company for the benefit of all stakeholders".[18] Justice Paperny concluded:

> It is reasonable to conclude that, where a creditor is acting contrary to that purpose, to thwart the restructuring for its own purposes, it may well be found to be acting for an improper purpose. Having regard to the recent amendments to the CCAA, and particularly to the requirement in s 18.6 that all parties act in good faith, it is fair to assume that there will be increased scrutiny of stakeholder conduct, and that principles

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[13] *Promax Energy Inc v Lorne H Reed & Associates Ltd,* 2002 ABCA 239 at para 2 **[TAB 5]**; also confirmed more recently in *Schendel Management Ltd,* 2019 ABQB 545 at para 33 **[TAB 6]**.
[14] *12178711 Canada Inc. v Wilks Brothers, LLC*, 2020 ABCA 430 at para 1 [*Calfrac*] **[TAB 7]**.
[15] *Calfrac* at para 2 **[TAB 7]**.
[16] *Calfrac* at para 62 **[TAB 7]**.
[17] *Calfrac* at para 63 **[TAB 7]**; citing *Callidus* at para 56 **[TAB 2]**.
[18] *Calfrac* at para 66 **[TAB 7]**.

> of creditor democracy and good faith dealings will be invoked to limit unbridled self-interest.
>
> (emphasis added)[19]

29. The jurisprudence is clear: where a creditor seeks to use restructuring legislation to advance a collateral agenda, whether to gain a litigation advantage, eliminate a competitor, or subvert the statutory process, Courts have not hesitated to intervene.

30. The Court's supervisory jurisdiction under section 11, informed by well-established precedent, provides it with the necessary authority to fashion a remedy that upholds the objectives of the CCAA and protects the fairness of the process.

ii. High Park's actions amount to an improper purpose and as a result High Park should be disallowed from voting on the Plan in any capacity

31. Permitting High Park to vote on the Plan through the McCarthy and Meadowlands Claims would be extremely prejudicial, not only to FOUR20, but to the entire body of legitimate creditors. As in *Laserworks*, where a single competitor's interference derailed an otherwise viable restructuring, here, High Park is the sole outlier.[20] FOUR20 has secured unanimous support for the Plan from all other voting creditors.[21]

32. Without High Park's interference, unsecured creditors stood to receive 70 cents on the dollar, with a top-up for the remaining 30 cents, with payments expected as early as May.[22] Stoke Canada Finance Corp. ("**Stoke**"), 420 OpCo's sole secured creditor, was to receive a 100% cash payout. All of that is now at risk.

33. Not only did all other Affected Creditors submit proxies voting in favour of the Plan,[23] but various creditors voiced their support for the Plan at the March Hearing in front of Justice Bourque, including RioCan Management Inc. and Stoke, noting specifically the certainty and speedy payout that the Plan would bring.[24]

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[19] *Calfrac* at para 66 **[TAB 7]**.
[20] *Laserworks* at para 2 **[TAB 4]**.
[21] Affidavit of Scott Morrow, sworn on April 17, 2025 at para 33 [April 17 Affidavit].
[22] April 17 Affidavit at para 25.
[23] April 17 Affidavit, at para 33.
[24] April 17 Affidavit, at para 33.

34. If the Plan is voted down by High Park, it is not clear what will happen next. FOUR20 could, for example, conduct a second SISP. However, there is no way of knowing what bids will be received in such a SISP, when a transaction under such a SISP would ultimately close, and what kind of payout Affected Creditors would receive from such a transaction, if anything at all. There is substantial risk to Affected Creditors if the current Plan is voted down by High Park.

35. Furthermore, based on FOUR20's current cash flows, there is a significant risk that, if the Plan does not proceed, the resulting delays, increased costs, and additional Court proceedings will likely require FOUR20 to obtain DIP financing, which would rank ahead of existing creditor claims and diminish their recoveries.

36. High Park's objective is not financial recovery; it is to derail the Plan, reignite the SISP or force liquidation, and extinguish the Litigation. This conduct is fundamentally at odds with the purpose of the CCAA, which is to facilitate a viable restructuring that benefits all stakeholders, even where that requires compromising certain individual rights.[25] If the Plan is defeated, there is absolutely no guarantee that any of the creditors will receive payment equal to what they would have received under the Plan, or even that they will see any payment at all.

37. Worse still, any potential recovery will be significantly delayed. If the Plan fails, creditors face a prolonged process involving contested Court hearings, a possible renewed SISP, and additional DIP financing that would prime existing claims. The only party that benefits from this is High Park, to the direct detriment of all others.

38. High Park has demonstrated no regard for the interests of the broader creditor group, including their interest in finality, certainty, and expedient recovery. Instead, it has hijacked these insolvency proceedings to pursue a self-interested agenda aimed at crushing the Litigation. That is an improper purpose, and one that flies in the face of the restructuring objectives of the *CCAA.*

39. Justice Bourque, in his decision dismissing High Park's application to reopen the SISP, recognized this pattern of conduct, stating: *"It is essential to consider whose interests the Joint Bid best serves. I find that answer is evident: High Park".*[26] High Park has acted consistently

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[25] *Calfrac* at para 66 **[TAB 7]**.

[26] *420 Investments Ltd (Re)*, 2025 ABKB 183 at para 48 [*420 Investments*] **[TAB 8]**.

in its own self-interest, and the purchase of the McCarthy and Meadowlands Claims is no exception.

40. Justice Bourque has also previously found that High Park is not an "Affected Creditor" in these proceedings. This aligns with the decision in *Triage T.R.I.M. Itée, Re*, where a competitor of the debtor purchased claims and used proxies to influence a vote.[27] On appeal, the Court held that the competitor's votes should not count, as the party was not a creditor and was acting solely to obstruct a restructuring. The Court found this constituted an improper purpose.[28]

41. It is clear from the jurisprudence that when a creditor acts with a motive that is collateral to the purposes of restructuring legislation, including under the *CCAA*, Courts are empowered to intervene to preserve the integrity of the process. High Park's intention to block the Plan not out of economic interest, but to advance its own litigation agenda, is precisely the kind of improper purpose contemplated in *Callidus*, *Laserworks*, and *Calfrac*.

42. The *CCAA* grants this Court the discretion to disallow votes cast for improper purposes, particularly where doing so is necessary to protect the legitimate interests of the broader creditor group and to avoid substantial injustice. High Park's votes, if allowed, would subvert the goals of the *CCAA* and deprive all other creditors of the fair and certain recovery the Plan would provide. The Court should exercise its discretion under section 11 to disallow High Park from voting on the Plan, directly or indirectly, and thereby uphold the principles of good faith, fairness, and creditor democracy that lie at the heart of the *CCAA*.

iii. High Park's attempt to vote through the McCarthy Claim and Meadowlands Claim is a collateral attack on the Justice Bourque Decision

43. High Park's acquisition of the McCarthy and Meadowlands Claims, and its subsequent attempt to vote on the Plan, constitutes a direct collateral attack on the Justice Bourque Decision. In that decision, Justice Bourque exercised his discretion under section 11 of the *CCAA* to expressly determine that High Park is not an Affected Creditor and, as such, has no right to vote on the Plan.[29]

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[27] *Triage T.R.I.M. Itée, Re*, 2003 CarswellQue 1273, 43 CBR (4th) 236 at para 1 [*Triage*] **[TAB 9]**.
[28] *Triage* at paras 84-85 **[TAB 9]**.
[29] *420 Investments* at para 65 **[TAB 8]**.

44. The doctrine of collateral attack prohibits a party from circumventing a valid court order by indirect means, rather than through proper legal channels. As stated by the Supreme Court in *Danyluk v Ainsworth Technologies Inc*, "a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it".[30]

45. The Ontario Court of Appeal has also outlined the policy reasons that underlie the rule:

> 152 The collateral attack rule rests on the need for court orders to be treated as binding and conclusive unless they are set aside on appeal or lawfully quashed. Court orders may not be attacked collaterally. That is, a court order may not be attacked in proceedings other than those whose specific object is the reversal, variation, or nullification of the order. See *Wilson v The Queen*, 1983 CanLII 35 (SCC), [1983] 2 SCR 595, at para 8.
>
> 153 The fundamental policy behind the rule against collateral attacks is "to maintain the rule of law and to preserve the repute of the administration of justice": see *R v Litchfield*, 1993 CanLII 44 (SCC), [1993] 4 SCR 333, at para 22. If a party could avoid the consequences of an order issued against it by going to another forum, this would undermine the integrity of the justice system. Consequently, the doctrine is intended to prevent a party from circumventing the effect of a decision rendered against it: see *Garland v Consumers' Gas Co.*, 2004 SCC 25 (CanLII), [2004] 1 SCR 629, at para 72."[31]

46. In the Justice Bourque Decision, Justice Bourque provided clear and reasoned justification for excluding High Park from voting. He concluded:

> "if High Park were allowed to vote at the creditors' meeting, the outcome would be a foregone conclusion." In my view, to allow High Park to vote would unduly prejudice the other creditors, particularly the unsecured creditors, who are not awaiting a trial judgment but are presently owed money, and who may be interested in certainty and finality in a speedy process.
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> […]
>
> Moreover, a failed creditors' meeting would undoubtedly lead to the resumption of the SISP and the likely liquidation of the Applicants. It is not readily apparent to me that a liquidation of the Applicants is required. As the Applicants' CEO, Mr. Morrow, attests, the Applicants have been able to run on a cashflow positive basis in these proceedings without the need for DIP financing. It must also be recalled that the Applicants find themselves in these CCAA proceedings as a result of the High Park Summary Judgment and High Park's enforcement measures. Those measures have ceased in light of the Feasby Decision."[32]

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[30] *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at para 20 **[TAB 10]**.
[31] *Indalex Limited (Re)*, 2011 ONCA 265 **[TAB 11]**.
[32] *420 Investments* at para 63 and 64 **[TAB 8]**.

47. High Park's attempt to purchase voting power through third-party claims in order to accomplish precisely what Justice Bourque's Order prohibited is a direct affront to that decision. Furthermore, High Park has not appealed nor sought leave to appeal the Justice Bourque Decision, nor has it otherwise sought to stay the Justice Bourque Decision. The use of McCarthy Claim and Meadowlands Claims to vote on the Plan reopens the very issue the Court has already determined, thereby rendering the prior ruling meaningless.

iv. High Park's failure to disclose its acquisition of the McCarthy Claim was an abuse of process and was not in good faith

48. Additionally, High Park's acquisition of the McCarthy Claim for the purpose of undermining the Plan, and its subsequent failure to disclose said acquisition to FOUR20, the Monitor, the Court, and the creditors, constitutes conduct in furtherance of an improper purpose. This amounts to a clear abuse of process.

49. The Supreme Court of Canada in *Behn v Moulton Contracting Ltd.*, confirmed that the doctrine of abuse of process is fundamentally flexible and fact-specific.[33] It applies where the misuse of the Court's procedure would be "manifestly unfair to a party in the litigation before it or would in some other way bring the administration of justice into disrepute".[34]

50. The doctrine of abuse of process is fundamentally flexible, and it has no specific requirements.[35] The doctrine exists to allow a Court to prevent the misuse of its procedure in a way that would be "manifestly unfair to a party in the litigation before it or would in some other way bring the administration of justice into disrepute".[36]

51. As discussed above, the Court's discretionary authority under section 11 of the CCAA includes the power to bar conduct that frustrates the goals of the statute, particularly when driven by an improper purpose. The lack of disclosure with respect to the McCarthy Claim, purchased in November 2024, before the conclusion of the SISP, is plainly not consistent with any legitimate

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[33] *Behn v Moulton Contracting Ltd*, 2013 SCC 26 at para 40 [*Behn*] **[TAB 12]**; see also *McLelland v McLelland*, 2021 ABCA 102 at para 17 **[TAB 13]**; and *De'Medici v Wawanesa Mutual Insurance Company*, 2023 ABKB 210 at para 20 **[TAB 14]**.
[34] *Behn* at para 40 **[TAB 12]**.
[35] *Behn* at para 40 **[TAB 12]**.
[36] *Behn* at para 40 **[TAB 12]**.

creditor objective.[37] Rather, it appears to have been an insurance policy, giving High Park leverage to force a resumption of the SISP or liquidation if its bid was not selected.

52. In the insolvency context, Courts are granted a high degree of discretion to remedy substantial injustice. As noted in *Laserworks*, tortious or near-tortious conduct, particularly when directed at an already vulnerable debtor, can amount to an abuse of process even where it does not meet the strict legal threshold of a common law tort:

> 53 Tortious or tort-like behavior falling short of a fully developed tort susceptible of formal proof or definition can nevertheless result in substantial injustice, particularly for persons at a point so vulnerable they must resort to insolvency protection. (See *Shepard*, [1996] M.J. No. 203.) In my view that is why Parliament chose the language it did in s. 187(9): to create a discretionary jurisdiction in courts that is not fettered, for example, by the high standards required for establishing such torts as abuse of process in other contexts. What remains to be considered is the threshold level of the substantial injustice which will result in remedial action by the court.[38]

53. Similarly, in *West Coast Logistics Ltd., Re*, the Court considered whether creditor conduct, specifically the demand for a personal guarantee under threat of voting down a proposal, amounted to abuse of process.[39] The Court found that although aggressive negotiation is permitted, conduct that crosses into coercion or near-tortious behavior is not: "While playing hardball during negotiations is entirely legitimate, conduct amounting to an abuse of process or other tortious or near-tortious character is not".[40]

54. High Park's conduct has been manifestly unfair to FOUR20. FOUR20 spent considerable resources developing the Plan, securing commitments, negotiating with creditors (including McCarthys), and preparing Court filings, efforts all rendered futile by High Park's failure to disclose its acquisition of the McCarthy Claim. Had High Park disclosed its purchase at the time it occurred, FOUR20 could have adjusted its restructuring strategy accordingly, saving both resources and time.

55. Moreover, High Park's lack of disclosure at the March Hearing allowed Justice Bourque to proceed under the mistaken belief that High Park's only interest in the proceedings arose from the ongoing Litigation. Had the acquisition of the McCarthy Claim been disclosed, it would have been a material fact directly relevant to Justice Bourque's decision to deny High Park

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[37] April 17 Affidavit, at para 31.
[38] *Laserworks* at para 53 **[TAB 4]**.
[39] *West Coast Logistics Ltd., Re*, 2017 BCSC 1503 at paras 1-2 [*West Coast*] **[TAB 15]**.
[40] *West Coast* at para 35 **[TAB 15]**.

voting rights. Instead, this lack of disclosure has necessitated additional Court proceedings, wasting valuable judicial resources and undermining the integrity of Justice Bourque's earlier decision.

56. This pattern of conduct on the part of High Park constitutes both an abuse of process and a substantial injustice. The *CCAA*'s restructuring process relies on transparency and good faith. High Park's actions offend these principles. The Court is well within its discretion to intervene and fashion an appropriate remedy to preserve the integrity of these proceedings.

57. High Park has repeatedly asserted in its materials in support of its March application to resume the SISP that it has acted in "good faith" throughout the CCAA process. It has gone further, accusing FOUR20 of engaging in conduct that is unfair and lacking in transparency. These assertions, however, are not only unsubstantiated but demonstrably contradicted by High Park's own actions. By deliberately withholding disclosure of its acquisition of the McCarthy Claim, a highly material fact, High Park has engaged in precisely the type of conduct it attributes to FOUR20. This underscores the extent to which High Park has sought to manipulate the process for its own benefit, while impeding FOUR20's ability to fairly navigate its restructuring.

58. Considering this, the Court should view High Park's claims of good faith with considerable skepticism and recognize that it is High Park, not FOUR20, that has undermined the integrity of the CCAA process.

59. High Park should not be permitted to do indirectly, through proxies or assignments, what the Court has already barred them from doing directly. To preserve the integrity of the judicial process and give effect to Justice Bourque's ruling, High Park must be disqualified from voting on the Plan through any acquired or assigned claim.

B. High Park's conduct justifies an award of costs.

60. While the general practice in CCAA matters is that each party bears its own costs, Courts do retain the discretion to depart from this practice when circumstances warrant it.[41]

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[41] *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2020 ABQB 12 at para 10 [*Canada North*] **[TAB 16]**.

61. Such circumstances may include bringing unusual or unnecessary applications, taking unreasonable positions, engaging in steps that prolong the proceedings, or engaging in misconduct that impacts the administration or cost of winding up the estate.[42]

62. Where a costs award is appropriate, Courts generally consider three categories:

1) Solicitor-and-own-client costs, which fully indemnify a successful party for their legal fees and proper disbursements;

2) Solicitor-client costs, which offer partial indemnity for reasonable legal fees and disbursements; and

3) Party-party costs, based on Schedule C of the *Alberta Rules of Court*, which may be subject to enhancements.[43]

63. The Court has broad discretion in awarding costs. The specific circumstances of the case will inform what the Court considers to be fair and reasonable.[44]

64. The authority to award costs is found in Rules 10.28–10.33 of the *Alberta Rules of Court*. These rules state that costs should be fair, just, efficient, and cost-effective. One of their core purposes is to offset the financial burden placed on a party who is compelled to participate in proceedings without valid legal cause. Under Rule 10.33(1), relevant factors in the present case include:

(a) the outcome and relative success of each party;

(b) the amount claimed versus the amount recovered;

(c) conduct that served to shorten the proceedings; and

(d) any other relevant considerations.[45]

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[42] *Canada North* at para 11 **[TAB 16]**.
[43] *Canada North* at para 12 **[TAB 16]**.
[44] *Canada North* at paras 13-15 **[TAB 16]**.
[45] *Alberta Rules of Court*, Alta Reg 124/2010 at rules 10.28 – 10.33 [*Rules of Court*] **[TAB 17]**; see also *Vizor v 383501 Alberta Ltd (Val Brig Equipment Sales)*, 2022 ABQB 245 at para 16 [*Vizor*] **[TAB 18]**.

65. Rule 10.33(2) further empowers the Court to consider conduct that unnecessarily delayed the action or was otherwise improper or abusive, including misconduct at any stage of the litigation.[46]

66. In this case, High Park hindered and delayed the process through its failure to disclose its acquisition of the McCarthy Claim. By failing to disclose this claim, High Park allowed FOUR20 and the Monitor to continue developing the Plan of Arrangement, investing time, money, and resources, while knowing the Plan would ultimately be undermined.

67. Furthermore, in the Justice Bourque Decision, Justice Bourque already clearly determined that it would not be appropriate nor fair for High Park to vote on the Plan and gave detailed reasons as to why. When High Park subsequently submitted "no" voting proxies on behalf of Meadowlands and McCarthys, this constituted a deliberate attempt to sidestep Justice Bourque's express ruling.

68. As a result of this conduct, FOUR20 has had to proceed with an otherwise unnecessary, contested Court hearing to determine whether High Park is entitled to vote via the Meadowlands and McCarthy Claims. This has resulted in needless delay and has substantially driven up the professional fees incurred by FOUR20 in these proceedings.

69. Causing unnecessary delay, concealing information, obstructing proceedings, and engaging in conduct tantamount to collateral attack and abuse of process are all grounds for awarding costs. FOUR20 should not have been required to engage in a second contested hearing on an issue that had already been decided by Justice Bourque, namely, High Park's ability to vote on the Plan.

70. High Park's conduct throughout these proceedings has been obstructive, misleading, and unnecessarily costly, both to FOUR20 and to the other stakeholders and its conduct clearly meets the threshold for a costs award. As such, FOUR20 respectfully requests that this Court award solicitor-and-own-client costs to FOUR20 as against High Park or, alternatively, such other costs as this Court deems appropriate.

V. CONCLUSION

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[46] *Rules of Court* at rule 10.33(2) **[TAB 17]**; *Vizor* at para 17 **[TAB 18]**.

71. FOUR20 has been acting diligently and in good faith throughout these CCAA Proceedings and its goal in advancing the Plan is to offer the best recovery possible to all creditors and to exit these CCAA Proceedings as a going concern for the benefit of all stakeholders.

72. High Park's conduct throughout these proceedings, its strategic acquisition of claims for the sole purpose of derailing the Plan, its repeated disregard for the restructuring objectives of the *CCAA*, and its failure to disclose material facts to the Court and stakeholders, demonstrates a pattern of self-interested behaviour and a failure to act in good faith. When a creditor acts with an improper purpose, or in a manner that amounts to a collateral attack on a Court order, the Court has the discretionary authority under section 11 of the CCAA to intervene.

73. This Court should not allow High Park to hijack these proceedings to sidestep proper adjudication of the Litigation without due process. For the benefit of all stakeholders, and to uphold the fair and proper administration of justice under the *CCAA*, the Applicants respectfully request that this Court grant the relief sought in the within Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21ST DAY OF APRIL, 2025.

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VI. TABLE OF AUTHORITIES