



This is the 5th affidavit of
J. Livingstone in this case and
was made on April 27, 2021

No. S-211985
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON
CAPITAL BRIDGING INC.**

PETITIONERS

AFFIDAVIT OF JAMES LIVINGSTONE

I, **JAMES LIVINGSTONE**, care of 1055 West Georgia Street, Suite 2167, Vancouver, in
the Province of British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer and sole director of Ardenton Capital Corporation (“ACC”), formerly Regimen Capital Partners Inc., and the President and sole director of Ardenton Capital Bridging Inc. (“ACBI” and together with ACC, the “**Petitioners**”), the Petitioners in these proceedings. As such, I have personal knowledge of the matters herein, except where such facts are based upon information and belief and where so stated, I do verily believe the same to be true.
2. I am authorized to make this affidavit on behalf of the Petitioners.
3. Defined terms used in this affidavit not otherwise defined shall have the meanings ascribed to them in the affidavits that I have previously sworn in these proceedings.

I. NATURE OF RELIEF SOUGHT

4. I swear this affidavit in support of an application by the Petitioners for an order, among other things:

- (a) further extending the Stay Period (as defined in the Second Amended and Restated Initial Order, defined below) to and including July 6, 2021;
- (b) approving the key employee retention plan (the “**KERP**”) offered by Ardenton to certain employees of Ardenton, and one employee of its subsidiary, Ardenton Capital Canada Inc. (“**ACCI**”), deemed critical to complete a restructuring under these CCAA proceedings, for the continued stability of the Petitioners’ business and operations, and to formulate a plan of arrangement or compromise (a “**Plan**”), together with a charge on all of the Petitioners’ Property for the maximum amount of the KERP;
- (c) approving each of (i) the Pre-Filing Report of KSV Restructuring Inc. (“**KSV**”) dated March 3, 2021; (ii) the First Report of KSV, in its capacity as the court-appointed monitor of the Petitioners (in such capacity, the “**Monitor**”), dated March 10, 2021, (iii) the Second Report of the Monitor dated March 25, 2021, and (iv) the Third Report of the Monitor (to be filed), and the actions and activities of the Monitor described in each of the aforementioned reports; and
- (d) sealing my sixth affidavit sworn April 27, 2021 (the “**Sixth Affidavit**”), which contains Confidential Exhibit “A”, and filed concurrently with this affidavit, until further order of this Court.

II. BACKGROUND

5. On March 5, 2021 (the “**Filing Date**”), the Petitioners sought and obtained the initial order in these CCAA proceedings (the “**Initial Order**”). Among other things, the Initial Order:

- (a) granted the initial Stay Period in favour of the Petitioners to and including March 15, 2021;
- (b) granted each of the Administration Charge and the D&O Charge; and
- (c) appointed the Monitor in these CCAA proceedings.

6. Under the Initial Order, the Court set the Comeback Hearing as March 15, 2021. At the Comeback Hearing, the Court granted an order amending and restating the Initial Order pursuant to which, among other things, the Stay Period was extended to May 7, 2021.

7. On March 31, 2021, the Court granted a second order amending and restating the Initial Order (the “**Second Amended and Restated Initial Order**”) pursuant to which, among other things:

- (a) the amount of the Administration Charge was reduced from \$1.0 million to \$750,000;
- (b) the terms of the interim financing term sheet dated March 23, 2021 entered into between ACC, as the borrower, ACBI, as the guarantor, and RCM Capital Management Ltd. (which was subsequently assigned to RCM Capital-WSC Holdings Ltd., and hereinafter referred to as the “**DIP Lender**”), as lender (the “**DIP Facility**”) were approved; and

- (c) a charge over all of the Property of each of the Petitioners in favour of the DIP Lender in respect of the DIP Facility was granted (the “**DIP Lender’s Charge**”).

8. The Court also granted orders on March 31, 2021 approving:

- (a) a claims procedure for soliciting and determining the claims against the Petitioners and against the Petitioners’ directors and officers (the “**Claims Process**”); and
- (b) the appointment of an investors committee comprised of seven investors (the “**Investor Committee**”), representing significant investors or representatives of groups of significant investors, to work with the Monitor and the Petitioners to formulate a Plan that will be presented to the Petitioners’ creditors in due course.

9. Further information concerning the Petitioners and their business and the events leading up to the filing is detailed in previous materials filed by the Petitioners and the Monitor in these proceedings, all of which can be found on the Case Website maintained by the Monitor (<https://www.ksvadvisory.com/insolvency-cases/case/ardenton-capital-corporation>).

III. ACTIVITIES SINCE THE LAST STAY EXTENSION MOTION

10. Since the Filing Date, the Petitioners, together with the Monitor, have been actively engaged with the Petitioners’ stakeholders. This included Ardenton preparing and delivering a comprehensive summary to its investors that set out a description of the financial performance of ACC and the Opcos on a combined basis compared to the previous year, and a summary of the financial performance, operations and outlooks for each of the Opcos (the “**Investor Report**”).

11. I understand that, as of the date of this affidavit, there have been six meetings of the Investor Committee, organized by the Monitor, one of which I attended to present to the Investor Committee on the status of the Petitioners' business and operations, and to address questions and concerns raised by the committee members. Two other Investor Committee meetings were attended by the management teams for each of our North American Opcos and our UK Opcos, respectively. I understand that the latter two meetings were well received by the Investor Committee and provided members with important information and insight pertaining to the current performance of the Opcos and their future growth outlooks.

12. These Investor Committee meetings continue to be an important aspect of these proceedings, and allow Ardenton to work collaboratively with its investors and the Monitor to develop a Plan that is acceptable and achieves the overall objective of preserving value.

13. In addition to the Investor Committee meetings, the Ardenton team has been engaged in the following activities since the last Court attendance:

- (a) working with the Monitor to compile and respond to information requests from investors, and preparing detailed Opco presentations for the Investor Committee meetings detailed above;
- (b) preparing, with the assistance of the Monitor, and delivering the Investor Report;
- (c) disclaiming two long term service supply agreements with service providers no longer needed by Ardenton;

- (d) assisting the Monitor with preparing several hundred notices to “known creditors” which were delivered to creditors in accordance with the Claims Process and to assist the Monitor to deal with numerous claims and issues concerning the claims;
- (e) preparing Ardenton’s quarterly report to be delivered to its investors, which is expected to be delivered in May 2021; and
- (f) structuring and negotiating the KERP.

IV. STAY PERIOD

14. Pursuant to paragraph 15 of the Second Amended and Restated Initial Order, the Stay Period expires on May 7, 2021.

15. In light of the progress I believe the Petitioners have made since the Filing Date with respect to these proceedings, the Petitioners are seeking to further extend the Stay Period to allow the Petitioners more time to complete its restructuring objectives and ultimately present a Plan to their stakeholders.

16. The extension of the Stay Period to and including July 6, 2021 is necessary in order to provide continued stability to the Petitioners’ business while the Petitioners, with the assistance of the Monitor, engage with the Investor Committee and work diligently on formulating a Plan that will be presented to the Petitioners’ creditors that is intended to maximize value for the benefit of the Petitioners’ stakeholders.

17. The nine-week cash flow projections, reviewed with the Monitor and attached as Appendices “C” and “D” to the Third Report to be filed by the Monitor, projects that the Petitioners will have sufficient funding to continue operating to and including July 6, 2021.

18. The Petitioners now have access to the Court-approved DIP Facility. As of the date of this affidavit, CAD\$1.0 million has been drawn under the DIP Facility.

19. Since the Filing Date, the Petitioners have acted, and continue to act, in good faith and with due diligence, and circumstances exist that make granting an extension of the Stay Period appropriate. The extension will also provide the Petitioners with the time to develop a Plan.

20. I understand that the Monitor supports the motion to extend the Stay Period and the Petitioners are unaware of any creditor who opposes this relief being granted. I do not believe that any creditor of the Petitioners will suffer any material prejudice if the Stay Period is extended to and including July 6, 2021.

V. KEY EMPLOYEE RETENTION PLAN

21. To ensure the continued participation of certain key employees of ACC, and one employee of ACCI, ACC is proposing to offer a limited number of key employees rights under the KERP (collectively, the “**KERP Participants**”). A redacted copy of the KERP setting out the terms of the program is attached hereto and marked as **Exhibit “A”**. An unredacted copy of the KERP which includes the identities of the KERP Participants and their respective roles with ACC and, in the case of one of the KERP Participants, ACCI, will be attached as Confidential Exhibit “A” to my Sixth Affidavit. Given the personal information of the employees comprising the KERP

Participants and the amounts of each of their proposed retention bonus is not public knowledge, my Sixth Affidavit will be filed separately with the Court under seal.

22. I confirm that I will not be participating in the KERP nor will I be entitled to any payments thereunder.

23. As a result of the Petitioners' financial situation and the commencement of these proceedings, the KERP Participants may be incentivized to seek alternative employment. Some of the KERP Participants have already been approached by potential employers and corporate head-hunters, and one of the employees who was to be included in the KERP has secured alternative employment and has recently resigned. The KERP provides appropriate incentives for the KERP Participants to remain in their current positions and also ensures that they are properly compensated for their critical assistance in these CCAA proceedings.

24. The amounts payable to KERP Participants are significantly less than the professional costs that would be incurred if the KERP Participants were to resign and outside professionals were required to take on their work. The KERP Participants also have specialized skills relevant to Ardenton together with historical and institutional knowledge integral to these CCAA proceedings, and there would be a steep, time-consuming and expensive learning curve for the professionals to obtain this knowledge.

25. Under the terms of the KERP each of the KERP Participants will receive a retention bonus as an incentive to continue their respective employment for the duration of these CCAA proceedings, which bonus shall be earned upon the earlier:

- (a) the implementation by the Petitioners of a Plan, as approved by the Monitor (a “**Plan Implementation Event**”), in which case the bonus shall be payable in two installments: (i) 50% on the date of the Plan Implementation Event, and (ii) the balance on the date that is 90 days thereafter;
- (b) the conversion of these CCAA proceedings to a different restructuring process, provided that substantially all of ACC’s business and assets have not been sold as of the date of the conversion (a “**Conversion Event**”), in which case the retention bonus shall be due and payable on the basis set out in 25(a) above; or
- (c) the completion of any realization process through the CCAA for substantially all of the Petitioners’ business or assets (a “**Sale Completion Event**” and collectively with a Plan Implementation Event and the Conversion Event, a “**Completion Event**”), in which case the retention amount shall be due and payable within five (5) days following the Sale Completion Event.

26. In order to receive payments under the KERP, each of the KERP Participants cannot have resigned, been terminated with cause or failed to perform his or her duties and responsibilities prior to the Completion Event.

27. The list of the KERP Participants was formulated by the Petitioners in consultation with the Monitor and was approved by me as the sole director of ACC and, in the case of one KERP Participant, the sole director of ACCI. In my view, all of the KERP Participants are critical to the Petitioners and to these CCAA proceedings as they are experienced employees with specialized skills relevant to Ardenton who have played significant roles in the initiatives taken to date,

including those activities noted above, which have provided them with knowledge and information that is critical to the success of these CCAA proceedings.

28. I understand that the Monitor supports the KERP, and that it has discussed the terms with the Investor Committee and they are also supportive of the proposed terms of the KERP.

29. The DIP Lender does not object to the KERP and the KERP Charge provided such charge is subordinate in all respects to the DIP Lender's Charge.

30. The Petitioners are seeking a charge of up to \$496,000 to secure the payments under the KERP. The Petitioners, with the support of the Monitor, believe the amount of the proposed payments under the KERP is reasonable in the circumstances.

31. In addition, as part of the KERP, ACC is also seeking approval for the ability to: (a) redeploy KERP entitlements to other KERP Participants; or (b) substitute KERP Participants, subject to the Monitor's approval, in the event that any of the initial KERP Participants resign or are terminated with cause prior to a Completion Event. I believe that it is appropriate that ACC have some flexibility to replace KERP Participants, if required, or redeploy any unused portion of the KERP to compensate the other KERP Participants who may be required to take on additional tasks as a result of such resignation or termination. Given the circumstances, offering a signing bonus could be critical to attracting prospective employees with the requisite skill set. Any such incentive bonus would not exceed the maximum amount of the KERP Charge and would be subject to the approval of the Monitor and maximize recoveries to creditors.

32. I believe that the KERP is necessary to ensure these key employees continue their employment with the Ardenton group while the Petitioners work to complete its restructuring with the ultimate objective to formulate a Plan.

VI. SEALING THE CONFIDENTIAL UNREDACTED KERP DOCUMENT

33. The Confidential Exhibit "A" to the Sixth Affidavit contains individually identifiable personal and financial information of the KERP Participants. In order to protect the confidentiality of such information relating to the KERP Participants, and in order to minimize disruption during these CCAA proceedings, the Petitioners are seeking an order sealing my Sixth Affidavit, which contains Confidential Appendix "A", until further order of this Court.

34. I am of the view that a sealing order is required because the unredacted copy of the KERP terms, which is attached as Confidential Appendix "A" to my Sixth Affidavit, contains individually identifiable personal and financial information, the dissemination of which could be prejudicial to Ardenton, the KERP Participants and/or cause irreparable harm within the organization.

VII. NEXT STEPS

35. Should the Court grant the relief sought by the Petitioners in this application, the Petitioners intend to focus on advancing their development of a Plan, with the assistance of the Monitor. To date, there have been preliminary discussions with the Monitor with respect to the framework of a Plan.

36. In addition, Ardenton is currently working on finalizing its quarterly report to investors that will be finalized and delivered to the investors this May.


37. Based on feedback from investors to date, it has been messaged to us that it is imperative that Ardenton continue to provide regular updates and reporting. Accordingly, many of the hours spent by the Ardenton team, including the KERP Participants, are spent preparing these reports as well as addressing information requests from investors directly or through the Monitor.

38. I am hopeful that a Plan will be presented to the Petitioners' stakeholders within the next few months.

VIII. CONCLUSION

39. I make this affidavit supporting the Petitioners' application for an order, among other things, extending the Stay Period and approving the KERP, and no other or improper purpose.

SWORN before me at the City of)
Vancouver, in the Province of British)
Columbia, this 27th day of April 2021.)


_____)
A Commissioner for taking Affidavits in)
the Province of British Columbia)

THOMAS W. CLIFFORD
BARRISTER & SOLICITOR
MLT AIKINS LLP
2600-1066 WEST HASTINGS STREET
VANCOUVER, B.C. V6E 3X1
TELEPHONE: 604-608-4555


_____)
JAMES LIVINGSTONE


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

AND

IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON
CAPITAL BRIDGING INC.

Key Employee Retention Plan

April 27, 2021

This is Exhibit "A" referred to in the
Affidavit of J. Livingston
sworn (or affirmed) before me at
Vancouver, B.C.
this 27 day of April, 2021.

A Commissioner/Notary Public for the
Province of British Columbia

Overview

1. The eligible participants in the key employee retention plan (the "KERP") proposed by the Ardenton Capital Corporation ("ACC") will be comprised of up to nine key employees (the "Employees") as determined from time to time in accordance with the eligibility criteria set out below. One of the key employees is employed by ACC's subsidiary, Ardenton Capital Canada Inc. ("ACCI" and together with ACC, "Ardenton"), but provides significant support to ACC and the other members of the ACC corporate organization. The maximum aggregate amount payable under the KERP will be \$496,000 (the "KERP Amount"), and will be subject to the payment criteria set out below.
2. The KERP will be secured by a charge (the "KERP Charge") on the property of ACC and Ardenton Capital Bridging Inc. (together, the "Petitioners"), on the terms set forth in the order granted by the Supreme Court of British Columbia on May 6, 2021 in the Petitioners' proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA Proceedings").
3. The KERP will also provide for an additional discretionary amount of \$50,000 to be used by the Monitor, in its sole discretion, for retention or incentive bonuses should it deem necessary and appropriate (the "Discretionary Funds"). The discretionary portion of the KERP shall not be secured by the KERP Charge, unless otherwise ordered by the Court.

Eligibility Criteria

4. An Employee will only be eligible to participate in the KERP if:
 - (a) Ardenton has determined that such Employee is essential to ensure the stability of the Petitioners' business, enhance the effectiveness of any sale process to be commenced by the Petitioners, and/or to facilitate an efficient restructuring and implementation of the plan of compromise or arrangement (a "Plan");
 - (b) KSV Restructuring Inc., in its capacity as the monitor of the Petitioners within the CCAA Proceedings (the "Monitor"), has consented to such Employee participating

in the KERP and to the terms on which such Employee may receive payments thereunder; and

- (c) The Petitioners have also consulted with RCM Capital-WSC Holdings Ltd. (by way of assignment from RCM Capital Management Ltd.), in its capacity as DIP lender to the Petitioners (the “**DIP Lender**”), with respect to such Employee participating in the KERP and have consented to the terms on which such Employee may receive payments thereunder.

Payment Criteria

- 5. In addition to any other terms as may be established by ACC and the Monitor in accordance with paragraph 4, Employees will only be eligible for a payment under the KERP if they are: (i) actively employed with ACC, or in the case of one of the employees, ACCI, until the applicable bonus payment date set out below, (ii) performing their duties and responsibilities, including any reasonable additional or transitional duties, through to such payment date, or (iii) terminated without cause before the applicable bonus is due and payable hereunder.
- 6. Entitlements under the KERP are to be earned upon earlier of: (i) the implementation of a plan or arrangement or compromise (a “**Plan**”), as approved by the Monitor (a “**Plan Implementation Event**”), (ii) the conversion of the CCAA proceedings to a different restructuring process (a “**Conversion Event**”); provided that substantially all of the Petitioners’ business and assets have not been sold as of the date of the Conversion Event; or (iii) the completion of any realization process through the CCAA for substantially all of the Petitioners’ business or assets (a “**Sale Completion Event**” and collectively with the Plan Implementation Event and the Conversion Event, a “**Completion Event**”).
- 7. Upon a Completion Event, and subject to Section 5 above, the bonus shall be payable to the Employee as follows:
 - (a) in the case of Plan Implementation or a Conversion Event, in two instalments: (A) 50% at the time of such event, and (B) the balance on the date that is 90 days following the relevant event; provided that the employee has not resigned nor been terminated for cause as of the date that the KERP Amount is due and payable hereunder; or
 - (b) in the case of a Sale Completion Event, in a single payment within five (5) days following the Sale Completion Event.
- 8. A KERP Employee will lose his or her entitlements under the KERP if terminated for cause or if he or she resigns before a Completion Event.

Allocation

- 9. The KERP Amount may be allocated amongst up to nine Employees, subject to: (i) the criteria set forth in paragraph 4 herein being satisfied and (ii) the execution of a binding agreement with the applicable Employee that sets forth the terms of any KERP payments, which in all cases must include the criteria set forth in paragraph 5 herein.

- 3
10. As of the date hereof, \$496,000 of the KERP Amount has been allocated in accordance with the terms herein, as contemplated in the attached **Schedule "A"**.
 11. The Monitor may allocate or deploy the Discretionary Funds if and how it deems necessary and appropriate.

Substitutions

12. In the event that any of the initial Employees participating in the KERP resign or are terminated with cause prior to a Completion Event, and ACC is required to (i) hire an alternative or (ii) reassign the work, ACC shall be entitled to substitute such Employee with another participant or redeploy the unused portion of the KERP Amount to an existing Employee so long as (i) any bonus offered to such employee or, in the case of redeployment, an Employee does not exceed the total KERP Amount, being \$496,000; unless Court approval is obtained to increase the total KERP Amount; (ii) in the case of new hire, the prospective employee is sufficiently qualified and is essential to the business operations; and (iii) the Monitor has approved such substitution or redeployment, as the case may be.

SCHEDULE "A"

1. List of Initial Eligible Employees

Employee	Title	Employer	Salary (\$)	KERP %	KERP (\$)

2. Description of Initial Eligible Employees

[Redacted description text]

[Redacted description text]

[Redacted description text]

[Redacted description text]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36
AND
IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON CAPITAL BRIDGING INC.

PETITIONERS

AFFIDAVIT OF JAMES LIVINGSTONE	
AIRD & BERLIS LLP 1800-181 Bay Street Toronto, Ontario M5J 2T9 Kyle B. Plunkett LSO # 61044N) Tel: (416) 865-3406 Email: kplunkett@airdberlis.com D. Robb English (LSO # 19862F) Tel: (416) 865-4748 Email: renglish@airdberlis.com Jonathan Yantzi (LSO# 77533A) Tel: (416) 865-4733 Email: jyantzi@airdberlis.com <i>Co-counsel to the Petitioners</i>	MLT AIKINS LLP 2600-1066 West Hastings Street Vancouver, BC V6E 3X1 William E. J. Skelly Tel: (604) 608-4597 Email: wskelly@mltaikins.com Thomas W. Clifford Tel: (604) 608-4555 Email: tclifford@mltaikins.com <i>Co-counsel to the Petitioners</i>