



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

AND

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

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: KSV Restructuring Inc., in its capacity as Monitor (the "**Monitor**")

To: Service List (attached hereto as **Schedule "A"**)

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Macintosh via teleconference at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on January 28, 2022. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order that service of Notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.
2. An Order, substantially in the form attached hereto as **Schedule "B"** (the "**Sealing Order**"), authorizing that the unredacted Ninth Monitor's Report ("**Unredacted Report**"), and the 1st Affidavit of Edmond F. B. Lamek, made January 18, 2022 (the "**Lamek Affidavit**"), be filed under seal pending further order of this Court.

Part 2: FACTUAL BASIS

Background

1. Pursuant to an order (the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") made on March 5, 2021, Ardenton Capital Corporation ("**ACC**") and Ardenton Capital Bridging Inc. ("**ACBI**" and together with ACC, the "**Companies**" or the "**Petitioners**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and KSV Restructuring Inc. ("**KSV**") was

appointed monitor (and in such capacity, the "**Monitor**"). The Companies and their non-filing affiliates and related companies are collectively referred to as "**Ardenton**".

2. Since the Filing Date, the Court has issued orders, that, among other things:
 - (a) granted the Companies a stay of proceedings, which currently expires on January 31, 2022 (the "**Stay Period**");
 - (b) approved a debtor-in-possession ("**DIP**") loan facility (the "**DIP Facility**") in the amount of \$5 million from RCM Capital-WSC Holdings Ltd. (the "**DIP Lender**"), and granted a charge on the Property in favour of the DIP Lender for this amount (the "**Interim Lender's Charge**");
 - (c) approved the appointment of an Investor Committee comprised of seven investors in ACC and/or ACBI (the "**Investor Committee**");
 - (d) approved a claims procedure for soliciting and determining claims against the Companies and against the Companies' directors and officers (the "**Claims Procedure**");
 - (e) approved a key employee retention plan (the "**KERP**") for certain of ACC's employees and related KERP Charge;
 - (f) approved a consulting agreement pursuant to which Kingsman Scientific Management Inc. ("**Kingsman**") was engaged to provide the services of Kyle Makofka to act as Chief Restructuring Officer during the CCAA proceedings, with the benefit of a \$200,000 CRO Charge, and to perform the services of a Chief Executive Officer upon ACC exiting the CCAA proceedings, subject to the approval of ACC's Board of Directors (the "**New Board**") to be appointed pursuant to the terms of the Companies' Plan of Compromise and Arrangement dated September 20, 2021 (the "**Plan**");
 - (g) authorized the filing of the Plan and approved the procedure for holding a creditors' meetings to vote on the Plan; and
 - (h) sanctioned the Plan (the "**Sanction Order**").

3. The Monitor filed the Monitor's Plan Certificate dated December 1, 2021 with the Court on December 7, 2021 (the "**Certificate**") confirming that all conditions to the Plan had been satisfied or waived.

4. The Companies are not seeking an extension of the Stay Period and are now seeking an order terminating these proceedings (the "**Termination Order**"); however, pursuant to the Termination Order, the Monitor will continue to have its authority under the Initial Order and the Claims Procedure Order to deal with the remaining disputed claim, namely the Scott Claim, and any remaining administrative or incidental matters that may arise prior to the filing of a further certificate by the Monitor (the "**Monitor's Discharge Certificate**") confirming the completion of all matters in these proceedings.

5. In service of completing these proceedings, the Monitor is seeking to approve the fees and activities of the Monitor and those of the Monitor's counsel, DLA Piper (Canada) Inc. ("**DLA**"), in these proceedings.
6. In support of that application the Monitor has filed a report to the Court (the "**Redacted Ninth Report**") that redacts the narratives of the legal invoices for Monitor's counsel and includes as a schedule the 1st Affidavit of Edmond F. B. Lamek.
7. There remains an unresolved Disputed Claim submitted by Stewart Paul Hamilton Scott ("**Mr. Scott**") relating to ACC's termination of his employment (the "**Scott Claim**"). Mr. Scott disputes the Monitor's disallowance of an amount totalling \$443,940.99 in respect of his Claim totalling \$525,441.00. In the event that the parties cannot resolve the Scott Claim, the Monitor intends to refer same to this Honourable Court for adjudication in due course in accordance with the provisions of the Claims Process Order granted by this Honourable Court on March 31, 2021.

Sealing Order

8. The Unredacted Report and the Lamek Affidavit includes unredacted copy of the invoices.
9. Ninth Report and the Lamek Affidavit contains privileged information and the Monitor believes it is appropriate that the information provided in Unredacted Report and the Lamek Affidavit be sealed on that basis. The Monitor does not believe any party will be prejudiced if this information is subject to the Sealing Order.

Part 3: LEGAL BASIS

1. The Monitor relies on:
 - (a) The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and in particular ss. 11,
 - (b) The Supreme Court Civil Rules;
 - (c) The inherent and equitable jurisdiction of this Honourable Court; and

Such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Sealing Order

2. The Unredacted Report and the Lamek Affidavit includes privileged information that the Monitor believes should be sealed.
3. The Monitor does not believe any party will be prejudiced if this information is subject to the Sealing Order.

4. The Court has jurisdiction to order that certain materials filed with the Court be sealed in the Court file. The Supreme Court of Canada has stated that such order can be granted where:
 - (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
 - (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.
Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 ("Sierra Club")
5. The information sought to be sealed fit squarely within the test established by *Sierra Club*.
6. The Monitor submits that the deleterious effects are minimal and outweighed by the benefits of the proposed Sealing Order.
7. The procedure to be followed in British Columbia for seeking a sealing order is set out in the Supreme Court of British Columbia PD-58, *Sealing Orders in Civil and Family Proceedings* (effective February 10, 2020), which the Monitor intends to comply with (modified as necessary in light of remote hearing requirements).

Part 4: MATERIAL TO BE RELIED ON

1. Unredacted Ninth Report of the Monitor, dated January 28, 2022;
2. Affidavit #1 of Edmond F.B. Lamek made on January 18, 2022; and
3. Any such further materials as counsel advises and this Honourable Court permits.

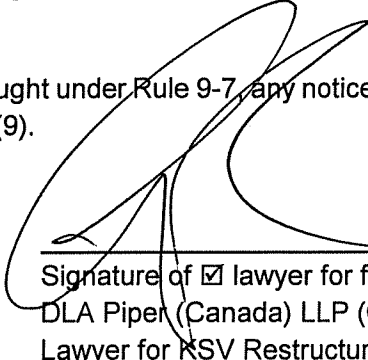
The applicant estimates that the application will take 5 minutes

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master and Mr. Justice Macintosh is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

January 25, 2022 _____
 Dated



 Signature of lawyer for filing party
 DLA Piper (Canada) LLP (Colin D. Brousson)
 Lawyer for KSV Restructuring Inc.

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

Date: _____	
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master	

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

Schedule "A"
(Service List)

IN THE SUPREME COURT OF BRITISH COLUMBIA
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1985, c. C-36

AND

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

PETITIONERS

SERVICE LIST

January 25, 2022

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Schedule "B"
(Sealing Order)

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

BEFORE THE HONOURABLE)
)
MR. JUSTICE MACINTOSH) January 28, 2022
)

ORDER MADE AFTER APPLICATION
(Sealing Order)

ON THE APPLICATION of KSV Restructuring Inc. in its capacity as Monitor (the "Monitor") of Ardenton Capital Corporation and Ardenton Capital Bridging Inc. coming on for hearing by teleconference at the Law Courts, 800 Smithe Street in the City of Vancouver, in the Province of British Columbia, on January 28, 2022; AND ON HEARING Colin D. Brousson, counsel for the Monitor and William Skelly counsel for the Petitioners and those counsel listed on Schedule "A" hereto;

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED THAT:

THIS COURT ORDERS THAT:

1. Access to Sealed Items permitted by

- Counsel of Record
 Parties of Record
 Further Court Order
 Others:

Items to be sealed

Document Name	Date filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order (to specific date or until further order)	Sought	Granted	
					YES	NO
1) Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Specific Documents Ninth Report of the Monitor 1 st Affidavit of Edmond F. B. Lamek	To be filed	1	Until further order.	X	X	<input type="checkbox"/>
3) Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Remainder of page intentionally left blank]

GENERAL

2. Endorsement of this Order by counsel appearing on this application other than counsel for the Monitor is hereby dispensed with.

3. The time for service and filing of the Notice of Application is hereby abridged and validated so that this Notice of Application is properly returnable today and the need for further service thereof is hereby dispensed with.

4. Upon service of this Order by electronic mail to all parties on the service list maintained by the Monitor's legal counsel (the "**Service List**"), each recipient will be at liberty to apply to vary this Order on two days notice to all parties on the Service List.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of the lawyer for the Monitor
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

REGISTRAR

Schedule "A"

List of Additional Counsel Appearing

Name of Counsel	Name of Party

No. S-211985
Vancouver Registry

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**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

**ORDER MADE AFTER APPLICATION
(SEALING ORDER)**

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 103454-00004

CDB/day

No. S-211985
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*
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NOTICE OF APPLICATION

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2800 Park Place
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Fax No. 604.687.1612

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