

COURT FILE NO. 25-3002847
ESTATE NO. 25-3002847
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE NOTICE OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF INFARM INDOOR URBAN
FARMING CANADA INC.

APPLICANT INFARM INDOOR URBAN FARMING CANADA INC.

DOCUMENT APPLICATION (NOI EXTENSION)

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

McMILLAN LLP
1700, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

Attention: Adam Maerov/Preet Saini
Telephone: 403.215.2752/ 403.531.4716
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Email: adam.maerov@mcmillan.ca
preet.saini@mcmillan.ca
File Number: 300427

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	February 22, 2024
Time:	2:00pm-4:00pm
Where:	Edmonton Law Courts via WebEx (see Appendix "A")
Before Whom:	The Honourable Justice Gill

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, Infarm Indoor Urban Farming Canada Inc. (“**Infarm Canada**”) seeks an order in the form attached hereto as Schedule “A”:
 - (a) abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable and that further service of this Application is hereby dispensed with;
 - (b) extending the time for filing of a proposal in these proceedings and corresponding stay of proceedings to April 8, 2024, being the expiry of forty-five (45) days from February 23, 2024 when the current time for filing a proposal and stay expires;
2. Such further relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

A. Background

3. Infarm Canada is in business of vertical farming which is the practice of growing crops vertically in stacked layers. Infarm Canada sells vertical farming equipment to allow indoor and outdoor farming and sells produce prepared using its equipment. In doing so, Infarm Canada promotes sustainable and pesticide free produce using its supplies and methods.
4. Infarm Canada is an Alberta corporation continued from British Columbia.
5. Infarm Canada closed its operations in Calgary, Alberta and Vancouver, British Columbia. Infarm Canada’s only remaining operating facility is located in Hamilton, Ontario (the “**Hamilton Facility**”).
6. The sole shareholder of InFarm Canada is a German company, Infarm – Indoor Farming GmbH (“**Infarm Parent**”). Infarm Parent is also indebted to TPC in the amounts described in paragraph 8 of the affidavit of Erez Galonska sworn December 21, 2023.
7. Infarm Parent is currently subject to administration proceedings in the United Kingdom (the “**Administration Proceedings**”). Pursuant to the Administration Order Damian Webb and Gordon Thomson of RSM UK Restructuring Advisory LLP were appointed as administrators of Infarm Parent.
8. The most significant secured creditor of InFarm Canada when these proceedings were commenced was TriplePoint Capital (“**TPC**”). As of September 15, 2023, TPC was owed the principal amounts of approximately EUR 16,277,451 and USD 18,368,080.
9. Infarm Canada is indebted to TPC pursuant to a continuing guaranty and security agreement dated April 29, 2020 (“**Guarantee**”). As security for its obligations under the Guarantee, Infarm granted a security interest in favour of TPC in substantially all of Infarm Canada’s assets.
10. TPC made a demand for repayment and issued a notice of intention to enforce security to Infarm Canada on September 21, 2023.

11. Other creditors of Infarm Canada include the following:
 - (a) ARCO/Murray International Construction – Toronto ULC who obtained judgment on October 2, 2023 Infarm Canada in the amount of \$3,703, 009.33 plus interest accruing at a rate of 18% per annum for amounts owing pursuant to its general contractor agreement with Infarm Canada; and
 - (b) The landlord, Calgary Industrial Portfolio Nominee Inc. and Albari Holdings Ltd. (together, the “Calgary Landlord”) who is seeking \$5,897,318 against Infarm Canada for amounts owing pursuant to its lease agreement with Infarm Canada.

B. NOI Procedural History

12. On October 26, 2023, Infarm Canada filed a Notice of Intention to Make a Proposal to its creditors (the “**NOI**”).
13. On November 10, 2023, upon application by Infarm Canada, the Honourable Justice Dunlop granted an Order (the “**NOI Extension Order**”):
 - (a) approving a first ranking administration charge against all of InFarm Canada’s assets, property and undertakings in the maximum amount of CAD \$250,000 to secure the fees and disbursements incurred by Infarm Canada’s legal counsel and of the Proposal Trustee, KSV Restructuring Ltd. and its legal counsel, in connection with services rendered to Infarm Canada both before and after the commencement of these proceedings; and
 - (b) granting an extension of time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA until and including January 9, 2024.
14. On January 8, 2024, upon application by Infarm Canada, the Honourable Justice Jones granted an Order extending the period of time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA until and including February 23, 2024 (the “**January 8 NOI Extension Order**”).

C. Infarm Canada Parent and Administration Proceedings Update

15. The Administration Proceedings resulted in a sale by way of a credit bid of substantially all of Infarm Parent’s assets, including all of the outstanding shares of Infarm Canada. TPC was owed the principal amounts of approximately EUR 7,000,000 by Infarm Canada and Infarm Parent followed closing of the UK credit bid transaction.
16. Infarm Canada has been in discussions with TPC regarding possible restructuring alternatives for an extended period of time.
17. Infarm Canada has been in discussions with TPC regarding possible restructuring alternatives for an extended period of time. Infarm Canada understands that Infarm Technologies (the “**Prospective Purchaser**”), a UK company is expected to submit a bid for the assets of Infarm Canada shortly with support of TPC.

18. The Prospective Purchaser has provided Infarm Canada with a draft assets purchase agreement regarding a proposed transaction. Infarm Canada and the Prospective Purchaser are in active discussion regarding a possible acquisition transaction.

D. Extension of NOI and Stay Period

19. Infarm Canada has maintained its operations in the normal course in Hamilton from the date of filing of the NOI. There have not any material disruptions to the business during that time.
20. The Proposal Trustee has reviewed and provided input on Infarm Canada's updated cash-flow statement that will be attached to the second report of the Proposal Trustee.
21. Since the January 8 NOI Extension Order, Infarm Canada has been diligently pursuing activities aimed at the presentation of a proposal. In particular, Infarm Canada has been diligently:
- (a) negotiating the terms of the potential sale to the Prospective Purchaser;
 - (b) obtaining a cash collateralized letter of credit facility from the Royal Bank of Canada necessary for continued use in its operations at the Hamilton Facility;
 - (c) coordinating with the Proposal Trustee to complete an appraisal of the assets located at the Hamilton Facility;
 - (d) providing the Proposal Trustee with access to Infarm Canada's premises, property, and books and records;
 - (e) working with the Proposal Trustee and its counsel to report regarding compliance with the cash-flow statement and to identify issues with respect to the financial condition of Infarm Canada and the status of its creditors;
 - (f) responding to inquiries from various creditors regarding the status of these proposal proceedings;
 - (g) handling employee issues and maintaining employee relations;
 - (h) providing updates to the Proposal Trustee regarding the Administration Proceedings;
 - (i) attending weekly update calls with the Proposal Trustee to discuss updates related to these proposal proceedings; and
 - (j) continuing operations with a view to maximizing value of Infarm Canada's business and assets.
22. Infarm Canada has acted and is continuing to act in good faith and with due diligence in completing the preliminary work and preparation with efforts to make a proposal to its creditors.
23. No creditor will be materially prejudiced if the extension being applied for is granted.

Material or evidence to be relied on:

24. The Affidavit of Matthew Shoresworn November 2, 2023.
25. The Affidavit of Erez Galonska, sworn December 21, 2023.
26. The Affidavit of Erez Galonska sworn February 13, 2024.
27. First Report of the Proposal Trustee.
28. Second Report of the Proposal Trustee.
29. Third Report of the Proposal Trustee.
30. Order granted by the Honourable Justice Dunlop on November 10, 2023.
31. Order granted by the Honourable Justice Jones on January 8, 2024.
32. Such further material as counsel may advise and this Honourable Court may permit.

Applicable rules:

33. Rules 6.47, 6.9, 9.14, 9.15, 11.27 and 13.5 of the *Alberta Rules of Court*; and

Applicable Acts and Regulations:

34. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended s 50.4, 69;
35. This Court's equitable and inherent jurisdiction; and
36. Such further authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

37. None at this time.

How the application is proposed to be heard or considered.

38. In person before the Honourable Justice Gill on the Commercial List at the time, date and place referenced above by WebEx.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

APPENDIX “A” – WEBEX INFORMATION

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE “A”

Form of Order

COURT FILE NO. 25-3002847
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Email: adam.maerov@mcmillan.ca
preet.saini@mcmillan.ca
File Number: 300427

DATE ON WHICH ORDER WAS PRONOUNCED: February 22, 2024
LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Gill

UPON THE APPLICATION of Infarm Indoor Urban Farming Canada Inc. (“**Infarm Canada**”) for an order extending the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings, until April 8, 2024; AND UPON noting that a certificate of filing of a notice of intention to make a proposal under subsection 50.4(1) of the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 was issued on October 26, 2023; AND UPON reviewing the order granted by the Honourable Justice Dunlop on November 10, 2023 which extended the time for Infarm Canada to file a proposal and the corresponding stay of proceedings, until January 9, 2024; AND UPON reviewing the order granted by the Honourable Justice Jones on January 8, 2024 which further extended the time for Infarm Canada to file a proposal and the corresponding stay of proceedings, until February 23, 2024; AND UPON hearing submissions by counsel for Infarm Canada, counsel for KSV Restructuring Inc. in its capacity as proposal trustee of Infarm Canada (“**Proposal Trustee**”) and any other counsel or other interested parties present; AND UPON reviewing the Affidavit of Erez Galonska sworn on February 13, 2024, and the Third Report of the Proposal Trustee;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, 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.

STAY EXTENSION

2. Pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the “**BIA**”), the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA, be and is extended until and including April 8, 2024.

MISCELLANEOUS MATTERS

3. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to Infarm Canada and the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order.
4. Infarm Canada or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SERVICE OF ORDER

5. Service of this Order shall be deemed good and sufficient:
 - (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (b) by posting a copy of this Order on the Proposal Trustee's website at <https://www.ksvadvisory.com/experience/case/infarm-urban-farming>.
6. Service of this Order on any other person is hereby dispensed with.
7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King’s Bench of Alberta