

COURT FILE NUMBER 25-3002847 B301-002847
 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

C121821

Jan 8, 2024
 COM

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 **AFFIDAVIT (NOI EXTENSION)**

ADDRESS FOR
 SERVICE AND
 CONTACT
 INFORMATION OF
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 DOCUMENT

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 File Number: 300427

AFFIDAVIT OF EREZ GALONSKA

Sworn December 21, 2023

I, **EREZ GALONSKA**, of the City of London in the United Kingdom MAKE OATH
 AND SAY THAT:

1. I am the founder and Chief Executive Officer of Infarm Indoor Urban Farming Canada Inc. ("Infarm Canada") and as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, I believe such information to be true.
2. This Affidavit is made in support of an Order extending the period of time within which Infarm Canada is required to file a proposal to its creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") and the corresponding stay of proceedings provided for in section 69 of the BIA, until and including February 23, 2024.
3. This affidavit is sworn further to the affidavit of Amit Matthew Shoresworn in this action on November 2, 2023.

The Business of Infarm Canada

4. Infarm Canada is in the business of vertical farming. Vertical farming is the practice of growing crops in vertically stacked layers. Infarm Canada sells vertical farming equipment to allow indoor and outdoor farming and sells produce prepared using its equipment. Infarm Canada promotes sustainable and pesticide free produce using its supplies and methods.
5. Infarm Canada is an Alberta corporation continued from British Columbia.
6. Infarm Canada formerly had operations in (i) Calgary, Alberta, (ii) Vancouver, British Columbia, and (iii) Hamilton, Ontario.
7. The operations in Calgary and Vancouver have ceased. Hamilton is Infarm Canada's only remaining operating facility. At present, Infarm Canada employs approximately 30 employees in Hamilton.

Significant Creditors and Filing of NOI

8. The most significant secured creditor of Infarm Canada is Triplepoint Capital LLC ("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. Infarm Canada's business in Calgary and Vancouver was not profitable. During the course of improving its leased facility in Calgary, Infarm Canada became unable to pay the costs of construction. Infarm Canada terminated the contract with its general contractor, ARCO/Murray International Construction – Toronto ULC ("ARCO") by written notice delivered on or about November 4, 2022.
12. On October 2, 2023, ARCO obtained judgment against Infarm Canada in the amount of \$3,703, 009.33 plus interest accruing at a rate of 18% per annum.
13. Infarm Canada's landlord for the Calgary facility has also commenced an action against Infarm Canada for amounts owing pursuant to its lease agreement with Infarm Canada. The landlord, Calgary Industrial Portfolio Nominee Inc. and Albari Holdings Ltd. (together, the "Calgary Landlord") is seeking \$5,897,318 against Infarm Canada.
14. On October 26, 2023, Infarm Canada filed a Notice of Intention to Make a Proposal to its creditors (the "NOI") pursuant to section 50.4 of the BIA.

November 10 NOI Extension Order

15. On November 10, 2023, upon application by Infarm Canada, the Honourable Justice Dunlop granted an 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 the fees and disbursements of the proposal trustee, KSV Restructuring Inc., and its legal counsel, in connection with services rendered to Infarm Canada both before and after the commencement of these proceedings (the "Proposal 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.

Infarm Canada Parent and Administration Proceedings Update

16. 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.

17. Infarm Parent is currently subject to administration proceedings in the United Kingdom (the "Administration Proceedings"). Pursuant to an Administration Order Damian Webb and Gordon Thomson of RSM UK Restructuring Advisory LLP were appointed as administrators of Infarm Parent.

18. The Administration Proceedings are expected to result 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. The credit bid in the Administration Proceedings was scheduled to be completed in late November 2023. However, there were delays in the closing of the transaction.

19. Court approval of the credit bid transaction is expected to occur on or before January 15, 2024.

20. Infarm Canada has been in discussions with TPC regarding possible restructuring alternatives for an extended period of time. Infarm Canada understands from those discussions that TPC plans to make a credit bid for all of the assets of Infarm Canada.

Extension of NOI Period

21. 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.

22. 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.

23. Since the November 10 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) providing the Proposal Trustee with access to Infarm Canada's premises, property, and books and records;

- (b) 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;
- (c) engaging in discussions with the TPC regarding a possible credit bid for some or all of Infarm Canada's property and assets;
- (d) responding to inquiries from various creditors regarding the status of the Proposal Proceedings;
- (e) handling employee issues and maintaining employee relations;
- (f) providing updates to the Proposal Trustee regarding the Administration Proceedings;
- (g) attending weekly update calls with the Proposal Trustee to discuss updates related to the Proposal Proceedings;
- (h) continuing operations with a view to maximizing value of Infarm Canada's business and assets;
- (i) disclaiming a lease not necessary to Infarm Canada's going concern operations;
- (j) reviewing and assessing Personal Property Registry registrations and issuing notices to discharge security to those creditors with no outstanding obligations; and
- (k) engaging a new distributor in Canada to distribute Infarm Canada's products to new customers.

24. The Proposal Trustee has engaged Infinity Asset Solutions Inc. to conduct a separate appraisal of Infarm Canada's tangible assets.

25. I am advised by Infarm Canada's counsel, McMillan LLP, that the period within which Infarm Canada has to file a proposal will expire on January 9, 2024 and that if the NOI is not extended, then Infarm Canada will be deemed on January 10, 2024 to have made a voluntary assignment for the benefit of its creditors pursuant to Section 50.4(8) of the BIA. Infarm Canada is seeking an extension from January 9, 2024 to February 23, 2024

26. In the circumstances, I do verily believe that Infarm Canada requires an extension of time to file a proposal to its creditors.

27. TPC has advised Infarm Canada that it will fund the amount of the proposed cash shortfall in the amount projected in the cash-flow statement during the proposed NOI extension period.

28. I do verily believe that Infarm Canada has acted and is continuing to act in good faith and with due diligence in completing the preliminary work and preparation of a proposal to its creditors.

29. I make this Affidavit in support of an application by Infarm Canada for an extension of the time within which to file a proposal.

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A. S. Said Ahmed

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