



Court File No. CV-20-00642256-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**BETWEEN:**

**KW CAPITAL PARTNERS LIMITED**

**Applicant**

**- AND -**

**VERT INFRASTRUCTURE LTD.**

**Respondent**

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on June 16, 2020 at 11:00 AM by a Judge of the Commercial List by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule "A" hereto in order to attend the hearing and advise if you intend to join the hearing by emailing Jeffrey Spiegelman at [jspiegelman@garfinkle.com](mailto:jspiegelman@garfinkle.com).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date         JUNE 10        , 2020

Issued by   
ALEXANDRA MEDEIROS-CARDOSO  
Local registrar

Address of 330 University Avenue  
court office Toronto, ON M5G 1R7

**TO: VERT INFRASTRUCTURE LTD.**  
605-369 Terminal Ave.  
Vancouver, BC V6A 4C4

**Attention: Abbey Adbiye**  
Email: Abbey@telus.net

**AND TO: ELITE VENTURES GROUP, LLC**  
277 Kingsbury Grade  
Lake Tahoe, NV 98449

**Attention: David Baker**  
Email: david@kettle-river.com

**AND TO: MYM NUTRACEUTICALS INC.**  
250 – 1095 West Pender St.  
Vancouver, BC

**Attention: Elizabeth Liu**  
Email: elizabeth.liu@mym.ca

**AND TO: ABACA INVESTMENTS USA, LLC**  
11 S. Swinton Ave.  
Delray Beach, FL 33444  
V7S1P3

**Attention: Howard Steinberg**  
Email: [howard.steinberg@me.com](mailto:howard.steinberg@me.com)

**APPLICATION**

**1. THE APPLICANT, KW CAPITAL PARTNERS LIMITED ("KW"), MAKES APPLICATION FOR:**

- (a) an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended ("**CJA**"), appointing KSV Kofman Inc. ("**KSV**") as receiver and manager over all the property, assets and undertakings of Vert Infrastructure Ltd. ("**Vert**"), in substantially the form of the draft order included in the Application Record at Tab 3;
- (b) to the extent necessary, an order abridging and validating service of the within application such that this Application is properly returnable on the date that this Application is heard; and
- (c) such further and other relief as counsel may advise and this Court may permit.

**2. THE GROUNDS FOR THE APPLICATION ARE:**

- (a) Vert is a publicly traded holding company which provides funding, infrastructure and branding to affiliated licenced cannabis and hemp growers and extractors in the United States. Vert's main business activities consist of raising capital to fund the operations of these American subsidiaries.

- (b) The primary assets of Vert are its 83% interest in, and 100% voting control over Elite Ventures Group LLC ("**Elite**") and Vert's 70% interest in, and 100% voting control over Wheeler Park Properties, LLC and its affiliated entities.
- (c) On February 8, 2019, Crop Infrastructure Corp. ("**Crop**"), the predecessor to Vert, issued three secured convertible debenture certificates in favour of KW, Plazacorp Investments Limited and Jesse Kaplan (collectively, the "**Secured Lenders**") in the aggregate principal amount of \$4,000,000 (the "**February Debentures**"), accruing interest at 10% per annum. In connection with the February Debentures, Crop issued 13,333,333 Warrants to the Secured Lenders.
- (d) On June 11, 2019 Crop issued four additional secured convertible debenture certificates in favour of KW in the aggregate principal amount of \$1,250,000 (the "**June Debentures**" and together with the February Debentures, the "**Debentures**"), accruing interest at 10% per annum. In connection with the June Debentures, Crop issued 4,166,667 Warrants to KW.
- (e) All of the debts, liabilities and obligations owing under the Debentures, among other things, are guaranteed by Wheeler Corridor Business Park LLC, Humboldt Holdings, LLC, Elite, DVG LLC, Ocean Green Management LLC, Wheeler Park Properties, LLC (the "**Guarantors**") and are secured by the assets of Vert and the Guarantors pursuant to a series of security documents (collectively, the "**Security Documents**");

- (f) Vert is currently in default of its obligations under the Debentures. Specifically, Vert has failed to make the Quarterly Payments due on September 30, 2019 (the "**September Quarterly Payment**"), December 31, 2019 and March 31, 2020 (together with the September Quarterly Payment, collectively the "**Unpaid Quarterly Payments**"). Interest under the Debentures continues to accrue. Each Unpaid Quarterly Payment is an event of default under the Debentures that is continuing (the "**Events of Default**").
- (g) Pursuant to the Security Documents, upon the occurrence of an event of default that is continuing, the aggregate principal amount of the Debentures becomes due and payable and KW is entitled to enforce its security interest, as agent on behalf of the Secured Lenders, including appointing a receiver;
- (h) As at May 26, 2020, Vert was indebted to the Secured Lenders in the aggregate principal amount of \$5,190,000 (the "**Indebtedness**") on a secured basis, together with interest, fees, costs and other allowable charges accrued thereon and continuing to accrue;
- (i) On May 27, 2020, KW sent Vert and Elite a demand letter requesting payment of the Indebtedness as it then was and a notice of intention to enforce security under section 244 of the BIA (the "**Notice**");
- (j) KW has not received payment of the Indebtedness, the Events of Default are continuing and ten days have lapsed since the sending of the Notice;

- (k) Vert is insolvent and is suffering from a liquidity crisis that is jeopardizing their continued operations;
- (l) Vert has insufficient cash to meet its obligations under the Debenture and has ceased paying its obligations to the Secured Lenders in the ordinary course of business as they become due, as evidenced by the Events of Default;
- (m) Vert transferred money to Elite for the purpose of leasing and developing certain real property interests in Nye County, Nevada, including the water rights associated therewith (the "**Nye County Property**"); however, there is reason to believe that Elite transferred such funds to related parties of Elite, specifically Aleph One LLC ("**Aleph**") and David Baker, the former Managing Member of Vert's American subsidiaries (together with Aleph, the "**Related Parties**"). The Related Parties used the monies to purchase the Nye County Property (the "**Elite Asset Transaction**");
- (n) KW does not hold security over the assets of either of the Related Parties. Elite continues to use the Nye County Property as a part of its hemp operations in Nye County, Nevada;
- (o) The appointment of a receiver will assist to protect the assets of Vert. If appointed, KSV intends to investigate, and if appropriate, unwind the Elite Asset Transaction, realize on the direct security granted to KW by the Guarantors and to commence receivership proceedings in the United

States. This includes proceedings at the state level in the United States in respect of one or more of Vert's subsidiaries;

- (p) The appointment of a receiver is just and convenient;
- (q) The general security agreement, which secures the obligations of Vert under the Debentures, is governed by Ontario law and permits the appointment of a receiver upon the continuation of an event of default;
- (r) As this Court has jurisdiction to appoint a receiver under the CJA and the connection of the debtor elsewhere is tenuous or *de minimus*, the balance of convenience and practicality provides an appropriate basis for the companion BIA application to be brought and dealt with in Ontario, in these circumstances;
- (s) Section 243 of the BIA;
- (t) Section 101 of the CJA;
- (u) Rules 1.04, 2.01, 2.03, 3.02, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (v) such further and other grounds as counsel may advise and this Honourable Court may permit.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) this Notice of Application;



- (b) Affidavit of Yisroel Weinreb affirmed on June 1, 2020, and the exhibits referred to therein;
- (c) The consent of KSV to act as receiver and manager, filed separately; and
- (d) Such further and other material as counsel may advise and this Honourable Court may permit.

10  
June 9, 2020

**GARFINKLE BIDERMAN LLP**  
1 Adelaide Street East,  
Toronto, ON M5C 2V9

Jeffrey Spiegelman (LSUC #312990)  
Tel: 416.869.7609

Lawyers for the Applicant,  
KW Capital Partners Limited

**Schedule "A"**

**Conference Details to join Motion via Zoom**

Join Zoom Meeting

<https://us02web.zoom.us/j/5123895385>

Meeting ID: 512 389 5385

One tap mobile:

+16699009128,,5123895385# US (San Jose) 12532158782,,5123895385# US  
+(Tacoma)

Dial by your location

- +1 669 900 9128 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- +1 301 715 8592 US (Germantown)
- +1 312 626 6799 US (Chicago)
- +1 346 248 7799 US (Houston)
- +1 646 558 8656 US (New York)
- +1 438 809 7799 Canada
- +1 587 328 1099 Canada
- +1 647 374 4685 Canada
- +1 647 558 0588 Canada
- +1 778 907 2071 Canada

Meeting ID: 512 389 5385

Find your local number: <https://us02web.zoom.us/j/5123895385>

**KW CAPITAL PARTNERS LIMITED and VERT INFRASTRUCTURE LTD.**

Applicant

Respondent

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**ONTARIO  
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Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

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