IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0989705 B.C. Ltd. (Re),*
2026 BCSC 761

Date: 20260428
Docket: S222758
Registry: Vancouver

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

- and -

In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., Alderbridge Way GP Ltd. and Alderbridge Way Limited Partnership

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment (re Sale Approval Order)

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Place and Date of Hearing:	Vancouver, B.C. March 30-31, April 1-2, 2026
Place and Date of Judgment:	Vancouver, B.C. April 28, 2026

Table of Contents

A. INTRODUCTION

[1] This application for sale approval of the large, nascent development property occurs at the four-year anniversary of this long, complex and heavily contested restructuring proceeding.

[2] In the abstract, a sale of this development property would be welcomed by all stakeholders as being a desirable, if not inevitable, outcome. However, the dispute arises here because the senior secured creditor, Romspen Investment Corp. (“Romspen”), proposes to acquire the property by application of a credit bid based on its substantial advances to the debtors.

[3] Various parties have been in litigation with Romspen for years now, advancing a number of issues, including challenging Romspen’s debt and/or security and claiming substantial damages for breach of the lending agreements. Some, but not all, of those issues have now been addressed by this Court and the Court of Appeal or otherwise resolved.

[4] In short, the parties opposing the sale say that Romspen is unable to advance a credit bid or, alternatively, it is not appropriate to allow Romspen to advance a credit bid when those remaining issues are outstanding. Alternatively, they say that the Court should direct another sales process toward producing a proposed cash-only sale and that the net sale proceeds should be held pending a final resolution of those issues.

[5] The applicant, MNP Ltd. ("MNP"), in its capacity as Monitor (the "Monitor") of the petitioners, supports the approval of the sale to Romspen. The Monitor asserts that it is not only necessary but desirable to proceed with a sale of the property to Romspen at this time and that a sale based on Romspen’s credit bid is also available and appropriate in the circumstances.

B. FACTUAL BACKGROUND

[6] Some of the basic details of the debtors and these proceedings are set out below.

[7] The petitioners are Alderbridge Way GP Ltd. ("Alderbridge GP"), Alderbridge Way Limited Partnership ("Alderbridge LP") and 0989705 B.C. Ltd. (the "Nominee") (collectively, the “Alderbridge Group”).

[8] The subject matter of this proceeding is land owned by Alderbridge LP which is comprised of a large partially completed development property located at 7960 Alderbridge Way and 5333 and 5411 No. 3 Road in Richmond, BC (the "Property"). The intended development was to be called the “Atmosphere” and was to include seven residential and commercial office towers spanning an entire city block.

[9] The Nominee holds title to the Property as nominee, agent and bare trustee for the sole benefit of Alderbridge LP pursuant to a Bare Trust Agreement. All of the issued and outstanding shares in the Nominee are held by Alderbridge GP, in its capacity as general partner of Alderbridge LP.

[10] On April 1, 2022, this proceeding began when the Alderbridge Group sought creditor protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 [*CCAA*]. On that date, I granted an initial order: *Alderbridge Way GP Ltd. (Re)*, 2022 BCSC 1436 [*Initial Order RFJ*].

[11] As of the date of filing, the Property had been excavated but no other significant construction activity had occurred. That remains the case even today and, as I will expand upon later in these reasons, the holding costs relating to the Property are not insubstantial, particularly given that ongoing shoring and dewatering is necessary given its below-sea level location in Richmond.

[12] When these *CCAA* proceedings began, Alderbridge hoped to achieve an expeditious resolution by way of a sales and investment process given the significant debt load and carrying costs: *Initial Order RFJ* at paras. 5–6. More on the evidence adduced at that earlier time is discussed below.

[13] There have been a myriad of applications over the years before me. A brief summary of the proceedings to this point is below:

a) On April 1, 2022, in the initial order, the original monitor was given enhanced powers to take steps in anticipation of the initiation of a sale and investment solicitation process in respect of the Property and other assets of the Alderbridge Group;

b) On April 25, 2022, on application by the Alderbridge Group, I granted an amended and restated initial order which, among other things, substituted the original monitor with The Bowra Group Inc. ("Bowra") (Bowra later merged with MNP and MNP was formally substituted as monitor in this proceeding);

c) On August 11, 2022, I granted the Second Amended and Restated Initial Order ("SARIO") which included expanding the Monitor's powers to authorize it to exercise control over the Property and engage consultants and experts to preserve, protect and enhance the Property;

d) Since the SARIO, I have extended the stay of proceedings a number of times. At the commencement of this hearing, I granted a stay of proceedings to July 31, 2026, relief that was unopposed by any party. This extension is required no matter what the outcome of this hearing is, however, if the sale to Romspen is approved, the Monitor expects that the transaction will close within that time.

e) I have currently authorized and approved interim financing in the amount of $10.7 million, which is charged against the Property:

    i. $850,000 from some of the Guarantors (as defined below), being Gatland Development Corporation, REV Investments Inc. and South Street (Alderbridge) Limited Partnership, which was fully advanced;

    ii. $1.65 million from Romspen, which was fully advanced; and

iii. $8.17 million from Romspen, of which $7.29 million in principal has been advanced, leaving an additional $888,000 borrowings for the Monitor.

C. THE TRANSACTION

[14] Before turning to the history of the sales efforts in this proceeding, I will set out the details of Romspen's offer (the "Transaction").

[15] Since May 2025, the Monitor has worked extensively with Romspen and, more recently, a developer involved in the purchase, The Onni Group ("Onni"), to finalize a purchase agreement for the Property. This included making a proposal to the Competition Bureau for confirmation that the contemplated transaction is exempt from a pre-merger notification and review by the Commissioner of Competition, which was received on August 19, 2025.

[16] On January 15, 2026, the Monitor, as Vendor, and Romspen (or its assignee), as Purchaser, executed a Purchase and Sale Agreement (the "PSA"). In summary, the PSA provides as follows (defined terms are per the PSA or later in these reasons):

a) Romspen, or its assignee, will acquire the Property;

b) The Purchase Price shall comprise: (i) a Deposit of $1,000; (ii) a Cash Amount required to satisfy the Court-Ordered Priority Amounts and to wind up the *CCAA* Proceedings (about $2.75 million); and (iii) a credit up to a specified maximum amount against the indebtedness owing by Alderbridge Group to Romspen (the "Credit Bid" and "Credit Bid Amount");

c) The Purchase Price is subject to certain adjustments, which include: adjustments customary for BC real estate transactions so that the Vendor will bear and pay all expenses and receive all income related to the Purchased Assets accruing prior to the Closing Date, and the Purchaser will bear and

pay all expenses and receive all income related to the Purchased Assets accruing after the Closing Date;

d) The Purchased Assets include all of the licenses, permits and development approvals for the Property; and

e) All of the Approved Development Agreements and Approved Benefit Agreements will be assumed by the Purchaser, including any Development Credits associated with the Assumed Agreements or the Plans, Specifications, Permits and Approvals. Any arrears, unpaid expenses or costs, and other amounts owing in respect of any Assumed Agreements will be assumed by the Purchaser.

[17] The PSA largely contemplates the granting of a typical vesting order; however, the order to approve the Transaction also has aspects of a reverse vesting order (“RVO”). The Purchased Assets include the Alderbridge Group's right, title and interest in and to: the Property; the Chattels; the Shares (Alderbridge GP's shares in the Nominee); the Assumed Agreements; the Intellectual Property; the Development Credits; all Warranties in respect of all of the foregoing Purchased Assets; and the Project Documents, without the assumption of the underlying agreements giving rise to the Project Documents.

[18] In addition, the PSA contemplates a vesting, transfer and assignment of the Excluded Assets and Claims to Alderbridge GP, which would be acting as the "ResidualCo". The Excluded Assets and Claims comprise assets of and claims against the Nominee, including: the shares in Alderbridge GP; the Pre-Sale Agreements (which were disclaimed) and any Development Agreements, Benefit Agreements, Commission Agreements, or other agreements which are not Assumed Agreements; and any Liability owed to any party arising prior to the Closing Date.

[19] The conditions to Closing include the granting of the Approval and Vesting Order (“AVO”) and that the AVO becomes a final order.

[20] There are also several Purchaser's conditions which must be fulfilled or waived by the Purchaser. One condition relates to whether certain Governmental Development Fees (“DCCs”) proposed to be levied by various municipal parties for the development are payable. The Monitor and Romspen agreed to schedule a hearing of an application to obtain a declaration that the DCCs are not payable (the “DCC Application”). The DCC Application began on April 7, 2026 and led to a settlement between the parties on April 15, 2026. As a result of that settlement, the Credit Bid Amount is to be reduced by approximately $14.9 million, being the difference between the amount of the DCCs to be paid to the municipal parties in order to issue the New Building Permit, and the DCCs already paid by the Alderbridge Group to the municipal parties for the issuance of the Original Building Permit (just over $19 million).

[21] The PSA also provides that the Purchaser shall be responsible for all transfer taxes, fees and expenses in connection with the registration of the AVO or transfer of the Purchased Assets. Needless to say, since the Property would continue to be held by the Nominee after Closing, no property transfer taxes are to be paid.

[22] Finally, concurrently with the execution of the PSA, Romspen is to assign the PSA to RIC (No. 3 Road) Holdings Inc. ("RIC Inc.") and RIC Inc. is then to be considered the "Purchaser".

D. THE RELATED ACTIONS

[23] The opposition to the granting of the AVO/RVO based on Romspen’s Credit Bid is largely based on the history of the litigation between the opposing parties and Romspen and the current status of those actions. A summary of that history and the various court decisions is necessary to provide context to the basis for the opposition.

i) History of the Dispute

[24] Prior to the commencement of the *CCAA* Proceedings, the Alderbridge Group was in the early stages of development of the Property. Pursuant to a loan

agreement between them and Romspen (the "Loan Agreement"), Romspen agreed to provide up to $422 million in construction financing, comprising $212 million directly and the balance through syndication. Romspen's loans were secured by, among other things, a mortgage on the Property, general security agreements and secured guarantees provided by Gatland Development Corporation, REV Holdings Ltd., REV Investments Inc., South Street Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel David Hanson and Brent Taylor Hanson, who are Alderbridge LP's partners and principals (the "Guarantors").

[25] The Alderbridge Group also entered into agreements with GEC (Richmond) GP Inc. and Global Education City (Richmond) Limited Partnership (collectively, "GEC") by which GEC was to purchase two of the future towers to be constructed on the Property. GEC paid a deposit of $60 million to the Alderbridge Group which was secured by a mortgage against the Property.

[26] As part of the construction financing, Romspen and GEC entered into a subordination agreement by which GEC subordinated its mortgage to the Romspen security (the "Subordination Agreement").

[27] By March 2020, Romspen had advanced $143.6 million to the Alderbridge Group. However, on March 31, 2020, Romspen refused to advance additional funds on the basis that it was not obligated to do so under the Loan Agreement. The result was a stalling of the project. The Alderbridge Group attempted to find another solution to the funding issues but was not successful. They struggled financially over the ensuing two years before filing the *CCAA* proceedings in April 2022.

[28] At the time of the *CCAA* filing, Romspen was the putative first-priority creditor, owed approximately $176 million. The second ranking mortgagee (defined as the "2ML Lenders") were owed approximately $76.7 million. GEC is the third-priority secured creditor, owed approximately $94 million as of June 2021.

ii) Procedural Order / Trial Procedure Order

[29] In late 2022/early 2023, a number of actions were filed: a) the Alderbridge Group/Guarantors filed an action against Romspen; b) GEC filed an action against Romspen; and c) Romspen filed an action against the Alderbridge Group/Guarantors (collectively, the "Related Actions").

[30] The 2ML Lenders also initially filed an action against Romspen but withdrew it. The 2ML Lenders continue to take no position in this proceeding, including on this application.

[31] In October 2023, on Romspen's application, I granted a Procedural Order to address the outstanding claims in the Related Actions: *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 [*Procedural RFJ*]. The claims at issue are set out in detail in the *Procedural RFJ* at paras. 21–25 and need not be repeated here. In short, Romspen sought judgment against the Alderbridge Group/Guarantors on the debt and security. The claims of the Alderbridge Group/Guarantors and GEC against Romspen were set out in para. 26:

> a) In the GEC Action, GEC seeks a declaration of priority over the Romspen Security, or alternatively, damages, including aggravated and punitive damages. ... GEC's claim and Romspen's counterclaim involve a consideration of various priority or subordination agreements entered into between GEC and Romspen; and
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> b) In the CCAA Debtors/Guarantors Action, the plaintiffs seek: damages for breach of contract (including the duty of good faith and honest performance); a declaration that the Romspen Security, including the Guarantees, are unenforceable; a declaration that no interest is payable to Romspen; damages for the tort of unlawful means; aggravated and punitive damages; and, set off.

[32] I granted the Procedural Order after the failed Initial SISP (defined below) and while the Monitor was still making efforts to obtain a new building permit. The purpose of the application was to expedite a determination of the issues between the parties and, in particular, gain clarity as to the debt and security issues raised in the litigation – in other words, determine, if possible, who was the "fulcrum creditor": *Procedural RFJ* at paras. 16–17.

[33] The Monitor did not take a position on the application for the Procedural Order but expressed its views on how the timing of the resolution of the Related Actions could impact the *CCAA* proceedings. The Monitor noted that clarity on the relative priorities and amounts of the secured claims was important to the sale process. The parties, the Monitor and the Court, were alive to the fact that Romspen would likely credit bid in the sales process. In particular, I stated in the *Procedural RFJ* at para. 17 that:

> … the Monitor states that a credit bid from secured creditor(s) is very possible and that, without knowing the relative amounts and priorities of the secured claims, any full or partial credit bid would be impossible.

[34] I granted the Procedural Order in the hope that the parties could move fairly quickly to a resolution of the liability issues as they affected any potential sale of the Property and in light of the clear indication that a credit bid from Romspen was possible, if not likely. The essence of the Procedural Order was to set deadlines for expedited pre-trial procedures to allow the parties to prepare for a hybrid trial of the liability issues, with any damages to be assessed scheduled for a later hearing.

[35] My comments in the *Procedural RFJ* emphasized that a determination of who was the "fulcrum credit" was a critical issue and that the proceedings were becoming stalled given the outstanding claims against Romspen that affected that issue.

[36] My comments in the *Procedural RFJ* are equally apt now since that state of affairs unfortunately persists two-and-a-half years later:

> [110] I return to GEC and the CCAA Debtors/Guarantors' opposition to this relief. I have already discussed that the fear of the Monitor is that, if a bid should arise through the SISP, there is the very real prospect that the restructuring will be stalled by reason of the outstanding claims in the Related Actions. The very real prospect that emerges from the present scenario is that a bid might arise that requires the "fulcrum creditor" to decide how to respond. The critical difficulty that arises is—who is the "fulcrum creditor"?
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> [111] As the Monitor states, the results from any future reinvigorated SISP are obviously unknown. However, a credit bid remains a very real prospect, as every stakeholder here knows, including GEC and the CCAA Debtors/Guarantors. They also know that Romspen is the creditor most likely to make that credit bid.

> [112] Counsel for the CCAA Debtors/Guarantors states that it will be "many years" before a final determination can be made of Romspen's "net position" given their counterclaims against Romspen. Counsel has bluntly submitted to the Court that, if Romspen is going to make a credit bid to own the Development, which he agrees is likely, "it can't be done". In other words, the CCAA Debtors/Guarantors will oppose any credit bid.
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> [113] Similarly, GEC has signaled that they would also oppose any credit bid. GEC says that, if there is a sale, there is:
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> > … the possibility that GEC may apply to have some portion of the sales proceeds held in court or in trust pending the resolution of the [GEC Action]. That application should be dealt with as and when it arises, on the facts that prevail at that time.
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> [114] The practical effect of the above positions in respect of any credit bid is that Romspen would either: 1) have to advance new money in order to trust up the purchase price pending the resolution of the Related Actions; or 2) take an inferior bid from a third party and then place the sale proceeds into trust.
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> [115] I agree with Romspen's counsel that these positions as to any credit bid amply demonstrate that the claims in the Related Actions are inextricably linked to this *CCAA* proceeding. The goal of this proceeding from the outset has been toward a sale of the Development, a result that is undoubtedly one that is consistent with the statutory objectives and remedial purpose of the *CCAA*. As counsel puts it, the whole point is to salvage this project and allow it to be completed for the benefit of all stakeholders and the larger community.
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> ...
>
> [117] However, litigation under the *CCAA* is more immediate and present—hence, the well-worn phrase, "real time litigation". It is against those "real time" present circumstances that the Related Actions have been commenced. In those circumstances, there is an urgent need to resolve the claims in the Related Actions as soon as reasonably possible and, of course, in a manner that is fair to all of the litigants. Rather than the "chaos" that counsel for the CCAA Debtors/Guarantors predicts would arise from the Procedural Order, there is the distinct possibility that this *CCAA* proceeding will be paralyzed by the outstanding claims in the Related Actions. I see a very possible scenario, as does the Monitor, where the parties are deadlocked in their positions in relation to any sale that might be available, as each seeks to exercise the leverage that they hold.
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> [Emphasis added.]

[37] In March 2024, I granted the Trial Procedure Order to settle how and when the trial would proceed. I directed a liability only trial to be held as soon as possible: *Alderbridge Way GP Ltd. (Re)*, 2024 BCSC 382.

iii) The Trial

[38] In April/May 2024, Justice Majawa presided over a 20-day trial of the liability issues that arose in the Related Actions. His reasons were released on August 7, 2024: *Alderbridge Way GP Ltd. (Re)*, 2024 BCSC 1433 [*Trial RFJ*].

[39] I need not discuss the trial reasons in detail, as they are summarized at para. 14 of the *Trial RFJ* and the specific relief granted is set out at para. 337 (the "Trial Order"). In summary, Majawa J. found:

a) Romspen had acted in good faith and was entitled to cease funding and it did not breach the Loan Agreement in doing so or for other alleged reasons. He granted judgment against the Alderbridge Group and Guarantors and dismissed the Alderbridge Group/Guarantors' action against Romspen; and

b) Romspen did not breach the Subordination Agreement with GEC and he dismissed GEC's claim against Romspen. He granted judgment in favour of Romspen against GEC for breach of the Subordination Agreement.

iv) The Appeal

[40] The Alderbridge Group/Guarantors and GEC appealed the trial judgment.

[41] In May 2025, the appeal was heard and, in September 2025, the reasons on appeal were released: *GEC (Richmond) GP Inc. v. Romspen Investment Corporation*, 2025 BCCA 332 [*Appeal RFJ*].

v) The Supplementary Appeal /Final Appeal Results

[42] In November 2025, Romspen sought clarification from the Court of Appeal in respect of the *Appeal RFJ*.

[43] In January 2026, the Court released supplementary reasons: *GEC (Richmond) GP Inc. v. Romspen Investment Corporation*, 2026 BCCA 23 [*Supp Appeal RFJ*].

[44] In its argument, the Monitor has set out a summary of the results from the *Appeal RFJ* and *Supp Appeal RFJ* which I understand has been accepted by all parties as reasonably accurate and complete:

> a) Romspen did not have the right to cease funding on the basis that its syndication failed under the terms of the Loan Agreement. The Court of Appeal remitted back to the trial court the issue of whether Romspen was in breach of the Loan Agreement (for ceasing to fund on the basis that its syndication failed), or whether it was entitled on any other basis to cease advancing funds to the Companies;
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> b) the declaration that the Petitioners and Guarantors were in default of their obligations to repay the amounts advanced by Romspen under the Loan Agreement was set aside;
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> c) the lower court did not err in determining that Romspen acted in good faith and made reasonable efforts to syndicate;
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> d) the question of the liability of the Guarantors for the Companies' obligations under the Loan Agreement and the related assessment of damages were remitted back to the lower court;
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> e) the dismissal of GEC's claim and the granting of Romspen's counterclaim against GEC were set aside; and
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> f) the lower court did not err in dismissing GEC's claims for unlawful means and equitable subordination, nor in finding that the Standstill Clause is not contrary to public policy; however, the issue of whether there was an implied term in the Subordination Agreement requiring Romspen to fund its obligations to the Debtors was remitted to the lower court for determination.

vi) The Aftermath

[45] Romspen has sought leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. The decision on leave has not yet been issued.

[46] There is presently no indication as to when the Related Actions might finally be resolved. In early March 2026, the parties appeared before Majawa J. to consider and address the "next steps" to resolve the further issues. A 10-day hearing has been scheduled from October 13–23, 2026 for the next chapter in the dispute.

[47] One remaining issue that has some significance is that, at trial, Romspen argued that it had many other contractual bases upon which to stop funding the project, either on March 31, 2020 or at some later date: *Trial RFJ* at para. 169. One of the alleged bases was that, by April 1, 2020, the Alderbridge Group was required

to have entered into a fixed-price construction agreement: *Trial RFJ* at paras. 179–186. This issue was not specifically decided by Majawa J. given his conclusion on the syndication condition, but I understand that this argument will be renewed by Romspen at the next hearing: *Trial RFJ* at para. 187. Needless to say, the Alderbridge Group disputes these positions.

[48] On December 19, 2025, GEC confirmed that it was no longer seeking any order or declaration subordinating Romspen's security to that of GEC. Accordingly, Romspen's debt now indisputably stands in first secured position on the Property.

E. POSITIONS OF THE PARTIES

[49] In attempting to summarize the parties' and the Monitor's positions, I am not going to do justice to the complexity of their significant written and oral arguments. The basic summary below will suffice before turning to the specifics of those arguments.

[50] The Monitor seeks the AVO after having tested the market now over some years and with disappointing results. The Monitor says that there is objective urgency in completing a transaction for the Property and that any further delay will result in increased risk and costs, which will erode value. Finally, the Monitor says that the continuation of the Related Actions does not prevent this Court from considering the Transaction. The Monitor says that the Transaction represents the best option available to advance the completion of the development project and approval is supportable under the *CCAA*.

[51] The Alderbridge Group/Guarantors say that Romspen has no ability to advance the Transaction on the basis of the Credit Bid or, alternatively, this Court should not exercise its discretion to approve the Transaction. They argue the application should be dismissed since approval should only be granted on the basis of Romspen paying the full purchase price in cash, to be paid into Court pending a determination of the Related Actions. In the alternative, they say that this Court should order the Monitor to conduct a further (third) expedited sales process to be

completed within 90 days for “cash only” bids, with the proceeds to be held in trust pending determination of the Related Actions.

[52] GEC adopts the position of the Alderbridge Group in arguing that the application should be dismissed. GEC also asks that this Court order the parties into mediation (although there is no application for such relief). In the alternative, GEC says that no sale should happen until a resolution of the Related Actions or alternatively, an improvement of the market where GEC says it is not opposed to a “cash option” for the Property.

[53] The arguments of the Alderbridge Group/Guarantors and GEC are essentially adopted by each other in opposing approval of the Transaction.

F. ISSUES

[54] The arguments of the various parties were not set forth in a joint cohesive list of what issues are to be decided. Nevertheless, I consider the following list of issues, which provide a reasonable framework to decide the application:

a) What is Romspen’s Status to Advance a Credit Bid Based on Its Advances / Security?

b) What Is the Effect, if any, of the Set-Off Issues in Relation to Romspen’s Advances / Security?

c) Do the Procedural Order / Outstanding Related Actions Preclude this Court from Considering the Matter?

d) Is it an Abuse of Process to Approve the Credit Bid?

e) Is it Appropriate to Approve the Credit Bid?

   i. The *CCAA* Parameters

   ii. Status of the Development in April 2022

   iii. The Sales Processes / Building Permit Issues

iv. Is Further Delay Justified for a Return to the Market?

v. Is Further Delay Justified to Await the Outcome of the Related Actions?

vi. The Balancing of the s. 36(3) Factors

vii. Is the AVO Flawed for Failure to include Conditions?

viii. Is the RVO Structure Appropriate?

G. ROMSPEN'S STATUS TO ADVANCE A CREDIT BID BASED ON ITS ADVANCES / SECURITY

[55] Before turning to the set-off issues and the effect of those issues on this application, I will address the present status of Romspen's advances and security.

[56] It is undisputed that Romspen advanced approximately $143.6 million to the Alderbridge Group before ceasing funding in late March 2020. The Alderbridge Group admit that fact. See also *Trial RFJ* at para. 52; *Appeal RFJ* at para. 11; *Supp Appeal RFJ* at para. 9.

[57] There is also no dispute that the Alderbridge Group (the Nominee and the Beneficial Owner) granted Romspen a first-ranking mortgage of the Property as security for their obligations to Romspen.

[58] Romspen's first mortgage is validly registered against the Property and its security interests in the Alderbridge Group's personal property were perfected by registration at the Personal Property Registry.

[59] The Monitor has obtained an independent security review from its legal counsel confirming that, subject to the standard qualifications, limitations and assumptions contained in that opinion, Romspen has a valid and first-ranking security interest over all of the Alderbridge Group's property, including the proposed Purchased Assets. I acknowledge that this opinion expressly states that it is subject

to and may be affected by any adverse rulings or determinations of any court of competent jurisdiction, including in the Related Actions.

[60] However, none of the remaining issues in the Related Actions relate to or challenge Romspen's position as a secured creditor holding a first-ranking mortgage against the Property. As above, GEC now concedes that its mortgage position is subordinate to Romspen's mortgage. The 2ML Lenders never took issue with Romspen's position as being in priority to theirs.

[61] The Alderbridge Group argues that Romspen has "no credit to bid". They argue that the amount of Romspen's indebtedness is a "live and unresolved issue".

[62] In support, they cite *North American Tungsten Corporation Ltd. (Re)*, 2016 BCSC 12 [*NATC*], where Justice Butler, as he then was, was considering a credit bid from the Government of the Norwest Territories ("GNWT"). An opposing party raised issues about the ability to advance a credit for the reclamation obligations where reclamation had not yet occurred (it was not a set-off case). The debtor company had admitted a secured debt owing to GNWT in an amount well in excess of the credit bid amount (para. 8). Justice Butler found that: GNWT held valid security and various defaults had occurred under that security; the reclamation obligations were "due and owing"; and debt was at least $15 million and likely higher (paras. 7, 21 and 26).

[63] The opposing parties make much of the fact that the Court of Appeal set aside the declaration of default and judgment originally granted in Romspen's favour against the Alderbridge Group and the Guarantors (paras. 1(ii) and (iii) of the Trial Order): *Appeal RFJ* at para. 117. GEC points to Romspen's original notice of default and demands to the Alderbridge Group/Guarantors dated February 17 and 22, 2021 as being of no force and effect given the outstanding issues in the Related Actions. They say that, in those circumstances, Romspen has "no credit to bid".

[64] They also say that the Court cannot approve a credit bid without being able to identify, “with confidence”, a minimum amount that Romspen is owed and that cannot be done here before the final determination of the Related Actions.

[65] I would say that this is really an issue as to the “net” amount that may be owing to Romspen. As I read the *Appeal RFJ* and *Supp Appeal RFJ*, the setting aside of the declaration of default and default judgment arose from the Court of Appeal’s finding that there were unresolved issues relating to whether Romspen had other reasons to stop funding, issues of repudiatory breach of the Loan Agreement and the effect of the subordination condition on the obligation of the Guarantors: *Appeal RFJ* at paras. 46, 54 and 117; *Supp Appeal RFJ* at paras. 26–37. In addition, of course, even if the Alderbridge Group establishes a breach by Romspen, the amount of any damages, if any, remain to be resolved.

[66] The opposing parties stress that the Monitor stated in its notice of application that the Court could not be “confident” as to the status of Romspen’s debt. However, I agree with the Monitor that they have misread the statement. The Monitor has *not* said that it is unfortunate that the Related Actions have not been resolved such that the Court can be confident that Romspen has a first-ranking secured claim in the amount of the Credit Bid. Rather, the Monitor has stated that it is unfortunate that the Related Actions have not been resolved such that the Court can be confident that Romspen has a first-ranking secured claim “in an amount *well in excess of the Credit Bid Amount* …”.

[67] The Trial Order provisions were *not* set aside by the Court of Appeal on the basis that: a) Romspen had *not* advanced $143.6 million; b) Romspen did *not* have valid security against the Property; and/or c) the Alderbridge Group/Guarantors had not *failed to repay* the advances to Romspen. Rather, the gravamen of the Court of Appeal’s finding was that, assuming that Romspen was not found to be entitled to cease funding for other reasons, the Alderbridge Group/Guarantors would then seek to establish damage claims against Romspen which they would then seek to set-off against the existing debt.

[68] I agree that there is no final determination that Romspen breached its obligations to the Alderbridge Group under the Loan Agreement. There is also, as yet, assuming any breach, no final determination as to the question of what damages, if any, were suffered by the Alderbridge Group in the circumstances. Finally, assuming all that comes to pass, there is no final determination as to whether those equitable damages will be set-off against Romspen's secured debt claim.

[69] What is before this Court are the present facts that establish that Romspen has advanced about $143.6 million, which together with interest is said to be presenting outstanding in an amount of approximately $270 million. Romspen is also owed a portion of the interim financing of about $8.7 million.

[70] In Romspen's mortgage, the definition of "principal" and similar terms includes "advance[s]" (1.27). The Mortgage is granted to secure the "advances" (3.1). Events of default include failure to pay the principal (31.1.1) and a filing under the *CCAA* (31.1.7), both of which have happened here. An event of default entitles Romspen to take steps to collect the monies due and owing (32.1) and also expressly entitles Romspen to declare the amounts owing and "due" and that indebtedness becomes "due and payable".

[71] The Alderbridge Group argue that "advances" are not the same as "debt", "indebtedness" or "amount owed", with the latter not having yet been established in the Related Actions due to the set-off issues.

[72] Leaving aside the disagreement as to nomenclature, I agree with the Monitor and Romspen that the Alderbridge Group has undeniably admitted at the start and throughout these *CCAA* proceedings that Romspen's debt for the initial advances exists and that Romspen's security was in default in the face of the failure to repay Romspen its initial advances. These facts were in fact the basis upon which the Alderbridge Group sought and obtained relief from this Court:

a) Petition filed April 1, 2022:

i. There is a clear acknowledgement that Romspen is a first-ranking secured creditor (paras. 7, 40 and 43);

ii. There are references to Romspen "claiming" the advances amounts (para. 8, 42 and 74). Nevertheless:

(1) the petition indicates they are aiming for a restructuring transaction involving a "credit bid" to see Romspen paid (paras. 11(b) and 81);

(2) the petition states that the Alderbridge Group's "long term liabilities" include "secured liabilities" which includes Romspen's debt (para. 72); and

(3) the petition states that Romspen was "in a position to enforce its security" (para. 77).

b) Affidavit #1 of Graham Thom sworn April 1, 2022: Mr. Thom largely confirms the statements in the Petition upon which the Alderbridge Group relied in seeking the relief which was granted in this proceeding. This would include an acknowledgement of Romspen's security and the amounts that Romspen was "claiming" as owed. However, Mr. Thom also refers to Romspen's advances as being a "liability" (para. 109) and that he was seeking to have Romspen "paid" (e.g., para. 201), presumably in respect of the advances; and

c) Notice of Application filed April 22, 2022: in the Alderbridge Group's application for various relief, which resulted in approval of the Initial SISP, they stated (at Part 3, para. 27(b)):

> The Petitioners recognize that they have been in default of the Romspen Credit Agreement and Romspen has a right to enforce its security.

[73] In the Alderbridge Group's notice of civil claim against Romspen (S232583), in the Relief Sought, they seek "a declaration that all security instruments, including guarantees provided to Romspen by the plaintiffs are unenforceable", however,

there is no legal basis provided for that requested relief other than in relation to the invalidation of the guarantees. Further, they seek a declaration that *no interest is payable* to Romspen. With respect to the advances, they seek to set-off all damages they might obtain against the advances. In other words, the set-off is intended to address the advances; they do not disagree that Romspen's initial advances were made and are payable.

[74] In the hearing before Majawa J., the Alderbridge Group did not advance any arguments to invalidate Romspen's security other than the guarantees and the security given by the Guarantors.

[75] In summary, even accepting the Alderbridge Group's submissions that the "debt", "indebtedness" or "amount owed" remain to be *finally* determined in the Related Actions, this argument is founded on the proposition that they have an as yet unproven equitable set-off claim for damages against Romspen's debt/advances that may or may not reduce the present advances of Romspen. The result would be more accurately described as a possible determination of the "net amount" owed to Romspen, or perhaps nothing at all, if damages are established and set-off is allowed.

[76] The present fact – or as the Monitor puts it, the *status quo* – remains that, at the very least, the advances of about $143.6 million exist and represent a valid debt owing by them to Romspen (along with the interim financing amount of $8.7 million). As I will discuss below, the fact that the Alderbridge Group is advancing claims, including damage claims, against Romspen which, if successful, they will seek to set-off against Romspen's advances, does not change that reality in fact and law.

[77] The further reality is that Romspen is the first-ranking mortgagee of the Property and is owed the advances which are less than the Credit Bid Amount.

[78] This is so even accepting the opposing parties' technical arguments as to whether or not the Alderbridge Group was in "default" of the Loan Agreement. The Monitor argues that, in law, even if a party is not in default of its loan obligations, that

does not mean the loan is not a debt properly owing. I agree. It remains the case that, in insolvency proceedings, the interests of a secured creditor are to be considered, whether or not they have declared default prior to the commencement of the proceedings. The same applies even if a secured creditor does not have judgment before that date.

[79] Leaving aside the issues discussed below, I conclude that it remains within the discretion of this Court to consider Romspen's Credit Bid under ss. 11 and 36 of the *CCAA*.

[80] In that respect, certain US case authorities cited by Romspen in argument provide some helpful comments in terms of why a secured creditor may wish to advance a credit bid.

[81] In *re: Aéropostale, Inc.,* 555 B.R. 369 (Bankr. S.D.N.Y. 2016) [*Aéropostale*], the US Bankruptcy Court was considering a credit bid in the context of a sale in an insolvency. The issue was whether the opposing parties had established "cause" which, under § 363(k) of the *US Bankruptcy Code*, was a basis upon which to deny the right to advance a credit bid. At 414, the Court stated:

> "Credit bidding 'allows the secured creditor to bid for its collateral using the debt it is owed to offset the purchase price[,]' which 'ensures that, if the bidding at the sale is less than the amount of the claim the collateral secures, the secured creditor can, if it chooses, bid up the price to as high as the amount of its claim.' … It therefore provides a safeguard for secured creditors, by insuring against the undervaluation of their collateral at an asset sale. … ("The ability to credit-bid helps to protect a creditor against the risk that its collateral will be sold at a depressed price. It enables the creditor to purchase the collateral for what it considers the fair market price (up to the amount of its security interest) without committing additional cash to protect the loan."). [citations omitted.]

[82] Romspen advances the same rationale for its Credit Bid as was expressed above.

[83] While the US Court's statements in *Aéropostale* were in relation to US legislation that is different from that of the *CCAA*, in my view, the above comments

equally arise in respect of this Court's discretion to consider a credit bid under ss. 11 and 36.

H. WHAT IS THE EFFECT, IF ANY, OF THE SET-OFF ISSUES IN RELATION TO ROMSPEN'S ADVANCES / SECURITY?

[84] The Alderbridge Group argues that this Court cannot proceed to even consider a credit bid because the net quantum of Romspen's claim (after accounting for their equitable set-off rights) has not been determined and the issue has been remitted back to Majawa J. They say that, until their set-off defence is determined on its merits, it cannot be said that Romspen is owed any amount.

[85] Given that the Alderbridge Group's claims have not yet been determined, let alone materialized into a judgment, they are essentially arguing that by simply raising the spectre of equitable set-off, Romspen has no rights in respect of its present position as a secured debtor with admitted advances pending that determination.

[86] I agree with the Monitor and Romspen that the Alderbridge Group's position is insupportable in law.

[87] In insolvency proceedings, and the *CCAA* in particular, set-off rights are preserved. Section 21 of the *CCAA* provides:

> The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.

[88] Accordingly, in respect of a determination of claims under the *CCAA*, a creditor may set-off against the claim of the debtor the amount of their claim on a dollar-for-dollar basis, and then prove for or pay the remaining balance (depending on whether they are a net creditor or net debtor after set-off is applied): *Coffey (Estate) v. Coffey*, 2014 BCSC 110 [*Coffey*] at para. 36, citing *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, 1995 CanLII 69 at para. 57.

[89] The nature of equitable set-off as a defence was discussed in *Coolbreeze Ranch Ltd. v. Morgan Creek Tropicals Ltd*., 2009 BCSC 151. In that case, an authority that no doubt informed the Court of Appeal's decision to set aside the declaration of default and judgment in favour of Romspen, Justice Pitfield stated:

> [37] Equitable set-off is a defence. It finds its base in the principle that a claimant should not be granted judgment on a claim against another where that other asserts a claim in response that is so related to the original claim that the cross claim can be said to go to the root of the claim. In such a case, the cross claims are regarded as components of a single transaction, such that judgment should not be granted on one of the components without concurrent disposition of the other. The set-off is regarded as equitable rather than legal because the validity of the cross claim has not been confirmed or quantified, and in that sense, is an unliquidated claim.

[90] However, both outside of insolvency proceedings, and within insolvency proceedings, where a party *asserts* equitable set-off, the result is not the elimination of the other party's claim (or the invalidation of their security). Both claims continue to exist as a matter of law until such time as judgment is rendered and equitable set-off granted.

[91] Both parties cite *Cactus Restaurants Ltd. v. Morison*, 2010 BCCA 458 [*Cactus*] for competing propositions regarding the effect of set-off. The context of that case is important, which was a reconsideration of this Court's dismissal of an injunction application. The injunction had been sought by the plaintiff Cactus to enjoin the defendant from exercising rights under a security agreement in default of $2 million being paid to him. Cactus was seeking damages from the defendant that they were attempting to set-off against that amount.

[92] In *Cactus*, Justice Lowry discussed the defence of equitable set-off, stating:

> [11] Unlike the judge, I see no legal basis upon which it could be said an equitable set-off has no application in the absence of an action being commenced by Mr. Morison. An equitable set-off, as distinct from a procedural set-off, is a substantive right held by a debtor that constitutes a charge against a chose in action for his debt. (See the discussion in *Aboussafy v. Abacus Cities Ltd.*, [1981] 4 W.W.R. 660 at 669-71 (Alta. C.A.).) In his text, *Set-Off*, 2d ed. (Oxford: Clarendon Press, 1996), S.R. Derham discusses equitable set-off proceeding from the following distinction at 56-58:

> 1.7.4 The substantive nature of equitable set-off
>
> We saw earlier that the right of set-off derived from the Statutes of Set-off takes effect only as a procedural defence. By this it is meant that separate and distinct debts remain in existence until judgment for a set-off, and, moreover, the defence has no effect until judgment. Prior to judgment the rights consequent upon being a creditor still attach, as do the obligations and liabilities consequent upon being a debtor. A similar analysis should apply when equity acts by analogy with the Statutes. However, a characteristic of the form of equitable set-off under discussion which has emerged in recent years is that it operates as a true, or substantive, defence. It may be invoked independently of any order of the court or of arbitrators. It may be set up by a person indebted to another, not merely as a means of preventing that other person from obtaining judgment, but also as an immediate answer to his liability to pay the debt otherwise due. ...
>
> Notwithstanding some judicial statements suggesting the contrary, the view that the defence is substantive does not mean that it operates as an automatic extinction of the cross-demands. A proper statement of the principle is that, if there is an entitlement to an equitable set-off, the creditor *as a matter of equity* is not entitled to treat the debtor as being indebted to him to the extent of the debtor's own claims against him. The cross-demands as a matter of law remain in existence between the parties until extinguished by judgment or agreement, though, as far as equity is concerned, it is unconscionable for the creditor even before then to regard the debtor as being in default to the extent of the cross-demand if circumstances exist which support an equitable set-off. A court of equity will protect the debtor's position by way of injunction, and it may also be the subject of a declaration.
>
> [Emphasis added.]

[93] By citing the above, the Court in *Cactus* rejected Cactus' argument that advancing equitable set-off "serves to extinguish" their obligation to pay the other party (paras. 6 and 11). Rather, as stated in the quote from S.R. Derham's *Set-Off* text (para. 11), the defence does not operate as an "automatic extinction of the cross-demands" and set-off is only applied when "entitlement" to set-off is established. In *Cactus*, the plaintiffs sought equitable relief in the form of an injunction to prevent the other party from acting on his claim, which of course is not the situation here.

[94] Accordingly, I reject the Alderbridge Group's assertion that Romspen does not have a claim until such time as their cross-claims are adjudicated. I agree with

the Monitor that the Alderbridge Group's claim for equitable set-off has not extinguished Romspen's debt claim nor invalidated Romspen's underlying security.

I. DO THE PROCEDURAL ORDER / OUTSTANDING RELATED ACTIONS PRECLUDE THIS COURT FROM CONSIDERING THE MATTER?

[95] The opposing parties suggest that my attempt to have the issues in the Related Actions determined per the Procedural Order and Trial Procedure Order have, in some fashion, foreclosed this *CCAA* Court from considering a sale involving Romspen's Credit Bid.

[96] I strongly disagree.

[97] Firstly, in issuing the Procedural Order, I was exercising my case management authority under s. 11 of the *CCAA* which provides for broad powers to make appropriate orders to advance the objectives of the *CCAA*: *Procedural RFJ* at paras. 31–32 and 57.

[98] Secondly, there is no doubt that I was considering options toward what was hoped to be a speedy determination to provide clarity as to Romspen's position in relation to the Property and clear a path to a sale of the Property. I will repeat what I said at para. 115 in the *Procedural RFJ*:

> … The goal of this proceeding from the outset has been toward a sale of the Development, a result that is undoubtedly one that is consistent with the statutory objectives and remedial purpose of the *CCAA*. As counsel puts it, the whole point is to salvage this project and allow it to be completed for the benefit of all stakeholders and the larger community.

[99] Those objectives – a sale of the Property to allow it to be completed for the benefit of the entire stakeholder group – remains the case today.

[100] Underlying the granting of the Procedural Order was the hope of this Court – also held by Romspen and the Monitor – that a fairly quick resolution of the issues in the Related Actions could provide clarity in terms of that goal in these *CCAA* proceedings. Unfortunately, that is largely not what happened, despite what were admittedly the best efforts of all parties in the Related Actions.

[101] In the *Procedural RFJ*, I highlighted the possibility (now a reality) that the Related Actions may not be resolved prior to considering any sale of the Property in the context of these proceedings:

> [118] It remains to be seen what will be the course of the Related Actions. It may be the case that it is impossible to resolve the claims prior to any result arising in the SISP. However, the Procedural Order that Romspen seeks does not foreclose any ability of the *CCAA* court to consider the means by which the claims in the Related Actions will be resolved.

[102] The Alderbridge Group argues that the above comment was made before Romspen advanced any credit bid. That is true, however, the possibility, if not probability, of such a bid clearly existed at that time (*Procedural RFJ* at paras. 111 and 114). As I stated in para. 121, the adjudication of the issues in the Related Action only had the "likely potential" of assisting this Court in addressing bids for the Property.

[103] In addition, the results of the trial and appeal have now provided some clarity regarding the issues that are relevant to this application. Finally, Romspen's Credit Bid offer did not materialize until January 2026 when the PSA was executed.

[104] As is well-known, *CCAA* proceedings are dynamic and this Court, like other Canadian courts exercising jurisdiction under the *CCAA*, are called upon to address issues as they arise and with regard to the evolved and evolving circumstances that are present and relevant: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 [*Century Services*] at para. 58; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [*Callidus*] at paras. 53–54. See also *Re Quinsam Coal Corp.*, 2000 BCCA 386 at para. 11, citing *Pacific National Lease Holding Corporation* (1992), 15 C.B.R. (3d) 265, 1992 CanLII 427 (B.C.C.A.) at 272.

[105] In *Canada v. Canada North Group Inc.*, 2021 SCC 30 [*Canada North*], the Court stated:

> [22] On review of a supervising judge's order, an appellate court should be cognizant that supervising judges have been given this broad discretion in order to fulfill their difficult role of continuously balancing conflicting and changing interests. Appellate courts should also recognize that orders are generally temporary or interim in nature and that the restructuring process is

> constantly evolving. These considerations require not only that supervising judges be endowed with a broad discretion, but that appellate courts exercise particular caution before interfering with orders made in accordance with that discretion [citation omitted].
>
> [Emphasis added.]

[106] In granting the Procedural Order, I did not abdicate my ability to continue to advance this *CCAA* proceeding as the supervising judge in the future by reason of a case management decision relating to the Related Actions that I made two-and-a-half years ago in quite different circumstances.

[107] The Alderbridge Group also suggest that, after having directed a resolution in the Related Actions, and with those Related Actions underway, I have no jurisdiction to consider the Credit Bid, including weighing the various factors under s. 36 of the *CCAA*. The Alderbridge Group argues that they are in the middle of a determination of the various claims in the Related Actions, including a determination of Romspen's net claim under s. 20 of the *CCAA*, to be considered in light of their s. 21 *CCAA* set-off rights. I agree that this was what I contemplated in the Procedural Order and Trial Procedure Order and what is still presently outstanding before Majawa J.

[108] However, the authorities are clear that even an outstanding s. 20 determination of claims in a *CCAA*, in conjunction with a consideration of any set-off claims under s. 21 of the *CCAA*, do not act as a barrier to a continuation of the proceedings in respect of other issues, including those under s. 36. I agree with the Monitor that s. 21 of the *CCAA* serves only to preserve a party's right to assert set-off in *CCAA* proceedings; it says nothing of the manner or timing by which such claims must be resolved and certainly does not paralyze this Court from continuing to exercise its *CCAA* jurisdiction as the proceedings continue, including considering any sale of the subject property.

[109] This point is made in *Montréal (City) v. Deloitte Restructuring Inc*., 2021 SCC 53, where the Court was considering set-off claims in *CCAA* proceedings:

> [68] Section 21 complements ss. 19 and 20; the compensation authorized by s. 21 is intended, among other things, to determine the value of the claim that a creditor may have against the debtor on the *date of commencement of*

> *proceedings*. In other words, the purpose of s. 21 is to provide an accurate picture of the pecuniary interest each creditor has in the restructuring on the date of commencement of proceedings, and of the number of votes each creditor should have (see *Kitco*, at para. 83). This provision is not concerned with what might happen to the debtor's business after that date, because the date of commencement of proceedings is when [TRANSLATION] "the claims must be established" and therefore when the mutuality of debts must be assessed [citations omitted].
>
> [Emphasis added.]

[110] In short, the fact that the Related Actions are still extant under ss. 20 and 21 does not mean that this Court has lost its ability to address what will happen to the Property now in these *CCAA* proceedings. In addition, I do not agree that the fact that a ss. 20/21 determination that is underway is a restriction that circumscribes this Court's more general jurisdiction to make orders as appropriate under s. 11 of the *CCAA*: *Canada North* at para. 21; *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 at para. 76.

[111] Further, the Alderbridge Group says that any approval of Romspen's Credit Bid will "eliminate" their set-off defence in the Related Actions which is expressly preserved under s. 21 of the *CCAA* and will be determined in the Related Actions. They say that it would release Romspen's "liability for setoff up [to] the Credit Bid Amount". They point to the Monitor's argument using the term "eliminate", although the Monitor has clarified what it meant by using that term.

[112] Firstly, there is no "liability for set-off". Rather, it is a defence that may be advanced. Further, I do not agree that any approval of Romspen's Credit Bid will have the effect of "eliminating" the Alderbridge Group's ability to claim equitable set-off in the Related Actions. I agree that the set-off issues will remain to be determined within the context of any later trial of damages, assuming that a breach of the Loan Agreement by Romspen is established before Majawa J. in the upcoming trial continuation.

[113] The positions of the Monitor and Romspen are clear – they are not asking this Court to determine the merits of the Alderbridge Group's claim of equitable set-off on this application. Rather, the Monitor is asking this Court to approve the Transaction

pursuant to ss. 36 and 11 of the *CCAA*, *notwithstanding the extant claims* asserted in the Related Actions, including the claim of equitable set-off.

[114] The Alderbridge Group have clearly misinterpreted what the Monitor meant in using the word “eliminate”. The Monitor was referring to the practical effect of approving the Credit Bid, not an elimination of the right to assert set-off. In referring to an “elimination” of the set-off rights, the Monitor is referring to the reality that:

a) *if* the Transaction is approved (which includes Romspen’s Credit Bid); and

b) *if* the Alderbridge Group is successful in establishing a breach of the Loan Agreement; and

c) *if* the Alderbridge Group is successful in establishing a damage claim against Romspen; and

d) *if* the Alderbridge Group is successful in asserting their claim of equitable set-off,

the amount of Romspen’s claim against the Alderbridge Group will have been reduced by the Credit Bid Amount. That is the practical effect of the granting of the AVO and the completion of the sale under the AVO.

[115] Both the Monitor and Romspen refer to another US authority discussing a credit bid by a secured creditor, being *In re Charles Street African Methodist Episcopal Church of Boston*, (2014) 510 B.R. 453 [*CSAME*]. As in *Aéropostale*, the Court in *CSAME* was considering §363(k) and whether the debtor, who had asserted claims similar to those advanced by the Alderbridge Group, could oppose a credit bid on the basis that the outstanding claims were “cause” to deny the credit bid. The Court rejected that the existence of the outstanding cross-claims and set-off were “cause” to justify denial of the credit bid:

> I rest this decision primarily on the nature of the objections articulated in the Second Objection. They do not challenge OneUnited’s underlying claims but instead interpose counterclaims as the basis of a defense of setoff. Of course, setoff is a valid defense, but it is an affirmative defense. The burden

> of proving it rests on CSAME. And the defense is not one that undercuts the existence of the primary claim; CSAME does not dispute the validity of the underlying loan agreements, the validity, perfection, or priority of OneUnited's mortgages, the amounts claimed to be due, or anything intrinsic to either of OneUnited's claims. Nor does CSAME allege that the mortgages or loan agreements may be avoided. Rather, CSAME asserts claims of its own that it would satisfy by setoff against OneUnited's otherwise valid claims. In short, there is no dispute about the validity or extent of OneUnited's secured claims.

[116] In that vein, I agree that the relief sought by the Monitor plainly does not address, let alone decide, the question of whether the Alderbridge Group's claim of equitable set-off exists and, if so, whether it should be granted in terms of determining what Romspen's net claim is, if any. The substantive right to assert set-off in the Related Actions will remain, and, if successful, the Alderbridge Group may still set-off any damages awarded in their favour against the significant outstanding debt which is being asserted by Romspen for not only the admitted advances but also interest and costs. Approval of the Transaction does not, as they argue, result in them not having a damage claim against Romspen.

[117] A simple illustration will make the point. If Romspen is found to be owed $300 million and the set-off damages are $200 million, the net result will be that the Alderbridge Group will still owe $100 million. In that scenario, if by that time the Credit Bid has reduced Romspen's debt say by $50 million (from $300 million to $250 million), the resulting debt owing by the Alderbridge Group after accounting for the $200 million in set-off damages will be $50 million. Similarly, if the set-off damages are increased to $350 million, the effect of applying the Credit Bid Amount would be a judgment in *favour* of the Alderbridge Group of $100 million, as opposed to a judgment *against* the Alderbridge Group of $50 million. The potential result, in other words, would be either a reduced amount owing by the Alderbridge Group, or an increased judgment amount against Romspen.

[118] GEC also argues that if repudiation is proven, there may be claims for unjust enrichment and restitution, citing John McCamus' *The Law of Contracts*, 3rd ed. Ch. 24, pp. 1140–1145 and 1159–1163. However, again, I cannot see that such claims eliminate Romspen's claim for advances already made. As stated in *Ascent One*

Properties Ltd. v. Liao, 2020 BCCA 247 at paras. 86–87, repudiation results in a release of future performance under the contract, but the rights and obligations that have matured continue to be enforceable.

[119] Somewhat ironically, approval of the Credit Bid has the *beneficial* effect of lowering Romspen's debt to allow a potential recovery of a greater judgment against Romspen for any amount that the net Romspen debt is exceeded by any set-off damages. I agree, however, that there is some impact on the Alderbridge Group in the sense that it may result in a substitution of a net damage claim in its favour as against Romspen's interest in the Property with a personal judgment for any net difference, which are circumstances that I will address below.

[120] In my view, it has also now come to pass that it is "impossible" to fully resolve the claims in the Related Action in the context of a sale of the Property, even now after years have gone by. The renewed trial is many months away and the resulting trial decision and potential (if not likely) appeals and ensuing decisions are years away.

[121] As I will discuss below, the status of the Property is such that it cannot await an outcome of the Related Actions. The opposing parties' unresolved claims against Romspen do not preclude Romspen from credit bidding part of its debt in partial payment of the Purchase Price. I also do not accept that the fact of extant cross-claims or claims against a secured creditor by a third ranking lender (such as GEC), which are as yet contingent and unliquidated, can be asserted as a basis upon which to summarily dismiss the ability of that secured creditor to credit bid for the Property.

[122] A consideration of Romspen's Credit Bid for the Property has now become "possible" rather than "impossible": *Procedural RFJ* at para. 17. In addition, in my view, matters have evolved to the point that Romspen's Credit Bid represents another potential viable option beyond those identified at para. 114 of the *Procedural RFJ*.

J. IS IT AN ABUSE OF PROCESS TO APPROVE THE CREDIT BID?

[123] The Alderbridge Group also argues that it would be an abuse of process to make the "quantum finding" necessary to approve the Credit Bid. They cite authorities discussing the doctrine of abuse of process, such as *Toronto (City) v. C.U.P.E., Local 79,* 2003 SCC 63 at para. 37.

[124] Similar to their arguments above, the Alderbridge Group argue that a determination of Romspen's claim via the Credit Bid would "eliminate" their set-off defence, when that issue is to be finally determined by Majawa J. They say this would be an abuse of process as a collateral attack on the Procedural Order, and the orders of Majawa J. and the Court of Appeal: *British Columbia (Attorney General) v. Malik*, 2009 BCCA 201 at paras. 33–34. Again, they argue that sanctioning a credit bid now would require this Court to make a finding on an issue expressly remitted to Majawa J. by the Court of Appeal (without varying or quashing the Court of Appeal's order), which would be an abuse of process.

[125] For the same reasons set out in the previous section of these Reasons, I disagree. Any approval of the Credit Bid has no impact on the issues to be determined before Majawa J.

K. IS IT APPROPRIATE TO APPROVE THE CREDIT BID?

[126] The Monitor says that approval of the Credit Bid is supported by application of the *CCAA* provisions and the jurisprudence that has considered and applied those provisions.

[127] The opposing parties say that it is not appropriate to approve the Credit Bid under the *CCAA*, again largely based on the outstanding issues in the Related Actions.

i) The *CCAA* Parameters

[128] The Monitor brings this application relying on this Court's jurisdiction under ss. 11 and 36 of the *CCAA*.

[129] Section 11 provides this Court with jurisdiction to grant any order that is appropriate in the circumstances. The well-known jurisprudence from the Supreme Court of Canada supports that this Court has broad or "vast" powers under that provision, subject to any restrictions in other *CCAA* provisions and provided that the exercise of that jurisdiction is consonant with the statutory objectives of the *CCAA*: *Century Services* at para. 70; *Canada North* at para. 21; *Callidus* at paras. 49–50, 65–68, 70 and 76.

[130] The *CCAA* is broad, remedial, and flexible legislation intended to be used for the benefit of both a debtor company and its stakeholders. The overarching objective of the *CCAA* is to enable companies to compromise or otherwise restructure their affairs to avoid the devastating social and economic impacts of insolvency, by preserving their business in a manner intended to cause the least amount of harm to the company, its stakeholders and the communities in which it carries on business.

[131] The oft-quoted statement in *Century Services* as to the objectives or remedial purposes of the *CCAA* bears repeating:

> [70] The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[132] The above sentiments were echoed in *Callidus*, where the Court stated:

> [40] Together, Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially "catastrophic" impacts insolvency can have …. These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public

> interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company [citations omitted].

[133] The authority of this Court to approve a sale is found in s. 36 of the *CCAA*. Section 36(3) sets out a list of non-exhaustive factors to be considered by the court:

> a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> d) the extent to which the creditors were consulted;
>
> e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[134] In addition, the parties refer to the principles identified in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) [*Soundair*] at 6 as helpful in considering whether to approve a sale:

1. Whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;

2. The interests of all parties;

3. The efficacy and integrity of the process by which offers were obtained; and

4. Whether there has been any unfairness in the sales process.

[135] Here, there are few, if any, issues relating to the sales process conducted by the Monitor. No party raised any issues as to the adequacy of the Monitor's efforts and the efficacy and integrity, reasonableness and fairness of the sales process in relation to s. 36(3)(a) and the first, third and fourth *Soundair* factors. There are

issues raised here as to the “interests of the parties”, being the second factor identified in *Soundair*.

[136] As I will discuss in more detail below, the Monitor has clearly approved both the sales process and the result proposed here, in satisfaction of the s. 36(3)(b) and (c) factors. In addition, I am satisfied that there has also been adequate creditor consultation in accordance with s. 36(3)(d).

[137] The focus of the arguments both for and against approval of the Credit Bid are focussed on the s. 36(3)(e) and (f) factors, being the effect of such approval on creditors and interested parties and whether the consideration is fair and reasonable.

[138] All parties agree that a s. 36 analysis with respect to the proposed sale involves a balancing of interests after consideration of the various relevant factors, including in relation to the impact of the set-off claims of the Alderbridge Group. Those interests include those of the debtor company, creditors and shareholders, and also extend to other interests beyond the company itself to the general public.

[139] The parties directly interested in that balancing exercise are certainly before me and represented on this application, being Romspen, the Alderbridge Group/Guarantors and GEC.

[140] In addition, other more broadly defined interests held by those persons or entities, generally described as “social stakeholders”, are also to be considered in terms of meeting the objectives of the *CCAA*: *Century Services* at para. 60.

[141] In this case, the broader public interests more indirectly affected are those held by the City of Richmond (the “City”) and the Richmond community in which the Property is located. I consider it indisputable that whether the development of the Property proceeds and when it proceeds are certainly matters of interest to these social stakeholders. The state of the Property, as I will describe below, has already generated interest from the City and no doubt, if the development proceeds, it will affect the Richmond community more broadly in terms of the housing and

commercial activity that it is intended to generate: *Teal-Jones Group (Re)*, 2025 BCSC 861 [*Teal-Jones*] at para. 128.

[142] As I stated in *Teal-Jones* at para. 130, although these more generalized concerns or interests can be considered, the Court must approach such concerns with some caution if addressing such concerns amounts to detracting from the statutory objectives in the *CCAA*: *Imperial Tobacco Canada Limited*, 2025 ONSC 1358 at paras. 160–162.

[143] As noted by the Monitor, the fact that the set-off issue is extant cannot overwhelm or deny a consideration of all of those interests in this insolvency proceeding – i.e. including those beyond the Alderbridge Group/Guarantors and GEC: *Coffey* at para. 41 citing *Canada Trustco Mortgage Company v. Sugarman* (1999), 179 D.L.R. (4th) 548, 1999 CanLII 9288 (O.N.C.A.) at para. 22; *SemCanada Crude Company (Re),* 2009 ABQB 397 at paras. 65–66. To do so would defeat this Court's ability to advance the objectives of the *CCAA* toward a successful restructuring so as to avoid the devasting effects of insolvency.

[144] There is a need at this point to set out more background facts before deciding how these *CCAA* proceedings should proceed and what current imperatives are relevant in this proceeding and in terms of this proposed Transaction under s. 36 of the *CCAA*. Much of this background information is set out in the Monitor's Twentieth Report to the Court dated February 13, 2026 (the "Report"), although the Monitor provided much of this information from time to time in many other previous reports to the Court over the last years.

ii) Status of the Development in April 2022

[145] By April 2022, as Mr. Thom described in his Affidavit #1, the Alderbridge Group had completed the major pre-construction phases of the development and largely finished site excavation and off-site civil work. Essentially, there is a large "hole" which is the size of a city block that has been excavated and is largely ready for underground parking construction to begin. That remains the state of play in relation to the Property today.

[146] The *CCAA* filing was preceded by a sale and investment solicitation process commenced in April 2021 by the Alderbridge Group. That process generated two bids although the winning bid did not complete due to conditions not being satisfied.

[147] The development permit in respect of the Property (the "DP") was issued in November 2018. The DP was issued under the applicable building code then in existence (the "Original Building Code"). A building permit was issued prior to the commencement of these *CCAA* Proceedings under the Original Building Code (the “Original Building Permit”).

[148] As above, in connection with the issuance of the DP and the Original Building Permit, the Alderbridge Group paid approximately $19.1 million in DCCs to various municipal parties.

[149] When this *CCAA* proceeding began, the DP remained active but the Original Building Permit had expired.

[150] As above, Mr. Thom stated that the aim of the restructuring was to effect a restructuring transaction that would pay some secured creditors (including Romspen) and convert some secured creditors to equity participants, all toward strengthening the balance sheet so as to continue the development of the Property.

[151] In other words, the objective of the *CCAA* proceeding was, and continues to be, toward a sale of the Property so as to allow for a completion of the development.

iii) The Sales Processes / Building Permit Issues

[152] Since April 2022 (i.e. the commencement of this proceeding), which I will highlight was four years ago, the Monitor has made substantial efforts to attempt to sell the Property, all at substantial cost which has been largely funded by Romspen.

[153] On April 25, 2022, on application of the Alderbridge Group, I granted an order approving a Sales and Investment Solicitation Process (the "Initial SISP") for the Property to be conducted by the Monitor. At the time, the Monitor was aware that the Original Building Permit had lapsed before the *CCAA* filing.

[154] Concurrently with the implementation of the Initial SISP, the Monitor initiated discussions with the City regarding the Original Building Permit and the status of the DP. The City advised the Monitor that:

a) in 2018, a new building code (the "2018 Building Code") had been adopted by the City which, as a result of the expiry of the Original Building Permit, applied to the Property;

b) in order to obtain a new building permit under the 2018 Building Code, an amendment to the existing DP would be required, which would result in a material loss of density, and would require rezoning; and

c) notwithstanding, the City was willing to consider a new building permit application that would minimize required changes under the 2018 Building Code and avoid the anticipated loss of density, provided the application was filed no later than November 1, 2023.

[155] The Initial SISP generated multiple bids to acquire the Property, however, based in part on discussions with those bidders, the Monitor realized that bidders were concerned with the lack of a building permit for the project. Given that state of affairs, the Monitor therefore expected that any offers received would provide for a significantly lower purchase price or would be conditional upon the issuance of a new building permit.

[156] Accordingly, the Monitor, in consultation with Romspen, determined that none of the bids received were acceptable and, effective December 7, 2022, terminated the Initial SISP.

[157] Following the termination of the Initial SISP, the Monitor worked extensively with development consultants to prepare a new building permit application, which was submitted to the City by the deadline on November 1, 2023. This was intended to minimize the revisions required under the 2018 Building Code, thereby preserving density and corresponding value. To date, the Monitor has incurred $2.1 million in

costs in relation to its application for the new building permit (the “New Building Permit”).

[158] The New Building Permit has not yet been issued and remains conditional on completion of certain obligations, including payment of the DCCs. The Monitor has completed the majority of these outstanding items.

[159] On August 2, 2024, the Monitor sought an order approving a further SISP (the "Second SISP") for the Property as being imperative at that time given the Monitor’s expectation that the New Building Permit would be issued in the near future (which would trigger a requirement to commence construction within six months).

[160] The granting of the Second SISP was opposed by the Alderbridge Group who asserted that there was no genuine or proven urgency and that a sales process was “unwarranted, unreasonable and prejudicial to the stakeholders”. In their application response, they took the position that a sales process then was irresponsible and unnecessary in light of the uncertainty of the outstanding claims. This position was largely based on the outstanding Related Actions. They stated that, if they succeeded in their claims against Romspen, it may allow for a restructuring and the avoidance of a third party sale. They attempted to minimize the risk in relation to the expiry of the anticipated New Building Permit.

[161] On August 2, 2024, I approved the Second SISP (collectively with the Initial SISP, the "Sales Processes"). I rejected the position of the Alderbridge Group, stating that any further delay of a sale was unreasonable, including in relation to the cost and risk of continuing to maintain the Property and the cost of the proceedings more generally.

[162] In the course of the Second SISP, the Monitor engaged Jones Lang LaSalle Real Estate Services Inc. ("JLL"). Commencing August 6, 2024, with the assistance of the Monitor, JLL carried out extensive marketing efforts in respect of the Property, including, but not limited to:

a) Preparing a teaser to solicit interest in the opportunity and compiling a distribution list of potential buyers;

b) Undertaking a broad marketing approach, including reaching out to over 1,479 potential purchasers, particularly in light of what was learned during the Initial SISP; and entering into nondisclosure agreements with 28 interested parties, who then received a copy of a confidential information memorandum; and

c) providing further information respecting the Property to potential bidders and allowing them access to the virtual data room.

[163] The Second SISP yielded eight non-binding letters of intent ("LOIs").

[164] During the course of this hearing, I granted orders sealing the Monitor's Confidential Supplement to the Monitor's Twentieth Report dated March 13, 2026 (setting out the results of the Second SISP and an unredacted PSA for the Credit Bid) and the Monitor's Second Confidential Supplement to the Twentieth Report dated April 1, 2026 (setting out the results of the Initial SISP). For obvious reasons, I will address the information in those Confidential Reports only generally.

[165] The results of the Initial SISP in 2022/2023 yielded eight bids, although most were withdrawn. Of the two bids remaining, the amounts were above the Credit Bid Amount, but were conditional upon financing and/or equity contributions and confirmation that the New Building Permit was in place.

[166] The results of the Second SISP were described by the Monitor as disappointing. Seven bids were received but all were substantially below the Credit Bid Amount by a significant margin. The only unconditional cash-only offer was extremely low in comparison to the Credit Bid Amount. The only offer coming close (but still substantially below the Credit Bid Amount) contemplated Romspen being an equity participant or was conditional upon unconfirmed financing and due diligence requirements that did not comply with the bidding process.

[167] JLL's report to the Monitor, included with the Confidential Supplement, stated that a conventional sale structure was only yielding values far below what was claimed by Romspen. All of these structures contemplated delaying payment to creditors until completion of the development, and included varying degrees of risk and potential joint venture participation by Romspen as the first mortgage lender. JLL stated that maximum value realization for creditors required project completion rather than an immediate sale of the partially completed development and they recommended an alternative approach.

[168] The Monitor accepted JLL's recommendation and thereafter altered the marketing process to explore alternative structures in discussion with major developers. In the context of these discussions, Romspen advanced discussions with one qualified developer, Onni.

[169] On March 19, 2025, the Monitor advised persons on the service list that it was then working with a "Preferred Bidder" to finalize a transaction for the Court's approval. On May 23, 2025, the Monitor subsequently terminated the Second SISP.

[170] Since May 2025, the Property has been passively marketed on JLL's website.

[171] On January 15, 2026, the Monitor executed the PSA.

[172] Based on the cumulative extent of marketing undertaken across the Sales Processes, the Monitor is of the view that the Property has been more than adequately exposed to the market. The Monitor states in the Report:

> In the Monitor's view, the Sales Processes were robust, comprehensive, and provided broad and sustained exposure of the Development Property to the market. The Development Property was actively marketed for approximately seven (7) months in the Initial Sales Process and a further eight (8) months during the Second Sales Process. The Development Property has been passively marketed since the May 2025 termination of the Second Sales Process through its continued listing on the Sales Agent's website.

[173] In my view, the Monitor's conclusions are fully supportable. In addition, the Monitor's conclusions arising from its commercial and business judgment are

entitled to deference by this Court and should not be lightly disregarded: *Sanjel Corporation (Re)*, 2016 ABQB 257 at para. 57.

[174] I conclude that the sale efforts of the Property through the Sales Processes to date have fully canvassed the market over an extended period of time and that those efforts were reasonable and adequate.

iv) Is Further Delay Justified for a Return to the Market?

[175] The Alderbridge Group/Guarantors and GEC suggest that the results of the Sale Processes were such that a return to the market is appropriate.

[176] I frankly do not see that the offers generated through the Initial SISP have any relevance now. The Initial SISP took place over three years ago. It is undeniable by anyone in BC who even takes a passing interest in the real estate market that the development market has materially deteriorated over those years.

[177] The state of the market is more clearly evidenced in any event by the results of the Second SISP. As noted by the Monitor, the proposed purchase prices were 30-50 percent lower than those received in the Initial SISP, and most offers contemplated some form of continued involvement from Romspen.

[178] The important point arising from the Sales Processes is that no previous cash offer even comes close to the Credit Bid Amount (now slightly reduced by the DCC amount) or the $143.6 million that represents Romspen’s current advances and the interim financing amount owed to Romspen.

[179] GEC’s submission that a return to the market could result in a better offer that would see it as the “fulcrum creditor” is at best fanciful and based on nothing more than hope. No evidence is before me to suggest that the market has improved since the results of the Second SISP were known. This is even assuming I acceded to the submission that a cash sale auction process took place and that Romspen should be denied the ability to advance a credit bid, which I conclude would not be appropriate. The Alderbridge Group suggest that the market would be negatively affected if

potential bidders knew of a potential credit bid by Romspen; however, in these circumstances, that potential would not be unusual. In any event, there is no evidence that the bidders in the Sales Processes reduced the offered prices because of that fact; indeed, many bidders were aware of Romspen's debt and required Romspen's participation in the transaction.

[180] As I will discuss in more detail below, even if the Monitor was directed to seek out an "all-cash" offer, approval of any such offer would inevitably be opposed by Romspen as being substantially below even the present advances and the interim financing. I agree with the opposing parties that Romspen would not have a veto in respect of any such sale; nevertheless, as the putative first ranking secured creditor having an established debt of $143.6 million and $8.7 million of interim financing, Romspen's position would be relevant.

[181] Further, contrary to the submissions of the Alderbridge Group, a cash only offer would only crystallize the loss of value to Romspen while also reducing the effect of any potential set-off claims of the Alderbridge Group instead of reducing it to a greater degree under the Credit Bid.

[182] The Monitor is of the view that the Property has been more than adequately exposed to the market, and a further marketing process is unlikely to result in increased value. The Monitor also states that there is a continued decline in the real estate market in the Lower Mainland generally.

[183] I agree. There is no reasonable basis to suggest that a return to the market will produce any better result than the Credit Bid. In the meantime, there are continued costs and risks to be borne with no corresponding benefit, as I will discuss below.

v) Is Further Delay Justified to Await the Outcome of the Related Actions?

[184] The opposing parties' argument to await the results of the Related Actions is even less persuasive. Any "final" result is years away and any set-off claim by the Alderbridge Group is unproven and tentative at best.

[185] The Monitor states that any prolonged delay in completing a transaction for the Property enhances the risk of structural deterioration, safety concerns, and increased site preservation costs, all of which continue to erode value. In my view, the Monitor's assessment is accurate and strongly suggests urgency in moving toward a sale of the Property in order to complete the project.

[186] Firstly, there are risks relating to the ability to obtain the New Building Permit which, if realized, could have significant negative effects.

[187] The New Building Permit has not yet been issued and remains conditional on the Alderbridge Group completing certain obligations. The Monitor has completed the majority of these outstanding items, but is withholding delivery of the remaining required items to the City to facilitate discussions and consultation between Romspen, Onni and the City (although the DCC issues have now been resolved which will determine the amount to paid in order to obtain the New Building Permit).

[188] Upon issuance of the New Building Permit, construction on the Property must be recommenced within six months. For those reasons, the Monitor is of the view that it is imperative that the New Building Permit be issued concurrently (or very shortly before) the closing of the PSA, or sometime after the Closing.

[189] The Monitor expresses the concern that the City will decline to issue the New Building Permit on the basis that the application for it has been outstanding for too long. Although the City has been cooperative with both the Monitor and the Purchaser and the City has given no indication that refusal is likely, the Monitor also states that there is no assurance that further delay will not jeopardize issuance.

[190] If the New Building Permit is not issued, the result would be a significant diminishment of the Property's value, due to the resulting loss of density under the 2018 Building Code and the requirement for rezoning and the costs of further delay. The Monitor is unable to specify the amount of any such loss of value, however, considers that it would be in the many tens of millions of dollars based on current market values and conditions.

[191] Secondly, the Monitor continues to be concerned about the timing of completion of a sale of the Property as it relates to the ongoing maintenance of the site and the cost of doing so.

[192] Since these *CCAA* proceedings began, the Alderbridge Group have incurred substantial site-preservation costs to maintain the Property in both a safe and compliant state. Costs of these *CCAA* Proceedings to date exceed approximately $12.2 million, largely for site preservation and restructuring costs generally. The ongoing site preservation costs alone are estimated at approximately $200,000 per month.

[193] The Monitor currently has just over $7 million in trust, but those funds represent estate funds that must be spent in a reasonable manner and for benefit of the entire stakeholder group. Those funds are not an excuse to unnecessarily delay the matter. In any event, the Monitor estimates that almost half of the $7 million will be exhausted by regular costs to August 2026, highlighted by the significant costs of continuing this proceeding.

[194] The Property remains a partially completed project, presently an open excavation site in the middle of the City, and has been in this state since the commencement of these *CCAA* Proceedings in April 2022. The Monitor had to implement interim stabilizing measures (i.e. construction of temporary berms) to mitigate the risk of wall failure and associated safety concerns. A significant portion of the *CCAA* site expenditures – and the basis for these concerns – relate to the construction and maintenance of the temporary berm, installed to stabilize the temporary shoring system.

[195] These are not idle concerns. After the site had been excavated in early 2020, a shoring system was implemented to avoid soil collapse into the excavation. Even before the *CCAA* proceedings, the City had expressed concerns about the shoring wall. As the Monitor stated in its Twelfth Report in February 2024, in July 2023, part of the shoring system broke off. On the recommendation of a geotechnical engineer hired by the Monitor, the berm was constructed where the anchors broke off. The Monitor stated that even though the engineer reported the system to be stable, the City had expressed concerns regarding the Property's proximity to a major road in Richmond. This led to the City requiring further berm construction to alleviate those concerns.

[196] The berm's structural integrity is regularly assessed by the Monitor's geotechnical consultants. However, the berm and the shoring system were never intended as long-term structures expected to function for this extended period, let alone remain in place for the approximately *six years* since excavation began and approximately two years since construction of the temporary berms. Its continued exposure increases deterioration risk, heightens safety concerns, and results in the berm being subjected to conditions it was never designed to withstand.

[197] The Alderbridge Group suggests that the safety concerns can be addressed by the Monitor seeking "targeted interim orders". It is unclear to me what such orders would even entail, or more importantly, how they would improve the measures already being undertaken by the Monitor.

[198] Thirdly, even more concerning is the Monitor's report that the City has previously expressed concerns to it regarding the safety of the site and indicated they may require the excavation site to be filled in. The Monitor reports that the City has expressed its general support for a transaction that would see construction re-commence in respect of the project that was approved by the City and is generally supportive of the approved project moving forward on the Property in a timely manner. The Monitor thinks that this support by the City may, in part, inform why the City has not required the Monitor to fill in the excavation site to this point; however,

should further delays be occasioned in closing the Transaction (or a different transaction for the sale of the Property), the Monitor is concerned that the City will require that the excavation site be filled in, a process that would be both substantial and expensive.

[199] The opposing parties offer no alternative beyond simple delay to allow the Alderbridge Group to attempt to establish a damage claim well into the future.

[200] In my view, further delay, let alone the attendant delay to await the outcome of the Related Actions, is not a viable option at this point.

vi) The Balancing of the s. 36(3) Factors

[201] Even though I have concluded that Romspen is able to advance a Credit Bid, it remains to be determined whether the Court should approve the Credit Bid as being appropriate in the circumstances.

[202] As above, the focus of the arguments against approval of the Credit Bid are focussed on the s. 36(3)(e) and (f) factors, being:

> e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[203] Before turning to that matter, it must be emphasized that the above two factors are only some of the relevant s. 36(3) factors. At the end of the day, those factors – including that the Alderbridge Group is asserting equitable set-off in the Related Actions – must be balanced against all of the other factors in an overall assessment as to whether or not approval of the Credit Bid is appropriate and aligned with the objectives of the *CCAA*.

[204] The Monitor states that, in its view, the balance of prejudice, fairness and the remedial objectives of the *CCAA*, as well as the imperative to conclude a timely transaction for the Property with a view to bringing these proceedings to a conclusion, all favour the Court exercising its discretion now, on the basis of the

current record, to approve the Transaction. The Monitor argues against indefinitely paralyzing these *CCAA* proceedings as proposed by the opposing parties.

[205] In the Report (at para. 65), the Monitor states:

> … the Monitor is of the view that the Transaction is the only viable and value-maximizing path forward for these *CCAA* proceedings. The Monitor therefore recommends that this Honourable Court approve the Transaction and grant the Approval and Vesting Order.

[206] I agree with the Monitor that the Transaction for the sale of the Property aligns with the remedial objectives of the *CCAA* to preserve stakeholder value and mitigate the risk of significant deterioration in asset value. The Monitor refers to similar circumstances – a robust sales process, lack of any other viable option and urgency – which justified approval of a sale in other *CCAA* cases, such as *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464 at paras. 55–57.

[207] Despite much effort to advance this restructuring over the last four years, the needle has not been moved to any great degree. This restructuring proceeding continues with the Property in its precarious state. The imperatives that existed back in April 2022 still exist – relating to the Property itself, the cost of maintaining the Property and the ongoing cost of these proceedings.

[208] In its submissions, the Monitor summarizes its reasons for recommending approval so as to avoid any further delay (with some minor edits):

a) The PSA is the best and only viable offer for the Property, following the culmination of two extensive, comprehensive Sales Processes exposing the opportunity to the market for a period of 15 months over three years;

b) A further marketing process is not expected to produce a greater value maximizing result, especially in considering the decrease in value between the Initial SISP and the Second SISP;

c) Romspen is supportive of the Transaction and the City is generally supportive of a transaction that will see construction recommence in respect of the Approved Project on the Property in a timely manner;

d) The Monitor has incurred substantial site preservation costs to date, which will continue to be incurred, for the proper preservation of an open excavation site. The Alderbridge Group argue that the monthly burn rate of approximately $200,000 is not “significant in isolation”, and that this factor should not be persuasive when compared with the quantum of the

claims being advanced in the Related Actions. However, this must be considered in light of the fact that they did not fund the vast majority of the $12.2 million in costs incurred to date and are not funding the ongoing costs;

e) The temporary structure and berm installed to support and preserve the excavation site were never intended to remain as long-term structures, or to remain in place for the six plus years since excavation began. Its continued exposure increases deterioration risk, heightens safety concerns, and results in the berm being subjected to conditions it was never designed to withstand; and

f) Any further delays in closing a transaction for the Property risk that the City will decline to issue the New Building Permit, resulting in a significant diminution in value of the Property, and/or require the Monitor to fill in the open excavation site.

[209] Particularly in light of the risks and concerns discussed above, I agree with the Monitor that the only way to preserve and capture the current value of the Property is to effect its sale to a party capable of recommencing construction quickly. Among other things, the Transaction would enable the project to move forward toward completion, ultimately benefitting the local economy, creating jobs, and enhancing the Richmond community with a fully developed property.

[210] Contrary to GEC's argument that the Transaction would result in the "death knell" of the development, approval would ensure a far greater likelihood of the completion of the development at the hands of Romspen/Onni.

[211] Allowing the Property to linger in its current state will only exacerbate stakeholders' concerns, risking a catastrophic loss in value and causing significant delays in the construction of any development at great cost.

[212] Ultimately, this Court must balance the prejudice of the Alderbridge Group losing their *potential* entitlement to assert set-off in respect of a portion of their as-yet unproven and unliquidated claim against Romspen's debt against the Property, against the prejudice to all stakeholders which might arise if the Transaction is not approved.

[213] Approval of a credit bid here would not be breaking new ground in terms of insolvency proceedings, including those types of proceedings before this Court. As

discussed above, a credit bid was approved in *NATC*, where Butler J. commented at paras. 22–24 that “credit bids have been accepted in Canadian insolvency proceedings”, citing *White Birch Paper Holding company (Arrangement relatif a)*, 2010 QCCS 4915 at paras. 22-23 and *TBS Acquireco Inc. (Re)*, 2013 ONSC 4663 at para. 24.

[214] The parties refer to a number of other cases where the Court has approved credit bids, although admittedly without opposition with respect to that aspect of the decisions and without dispute as to the secured creditor’s claim.

[215] In *Aquilini Development Limited Partnership v. Garibaldi at Squamish Limited Partnership*, 2024 BCSC 764, the receiver sought and obtained approval of a credit-bid transaction implemented by an RVO for a large-scale development project (para. 14) where it was necessary to complete the transaction urgently.

[216] In *Veris Gold Corp, Re*, 2015 BCSC 1204, I approved a credit-bid asset sale to the interim lender after a prolonged sales process produced no qualified bids despite deadline extensions and extensive restructuring efforts. I found that the assets had been sufficiently exposed to the market through the extensive sales process and that the offer by the interim lender was the only real alternative for the lender to obtain some value from the assets secured by its priority charge (paras. 27–30). Similar to this case, the monitor expressed the urgency in proceeding with the transaction.

[217] Other case authorities referred to by the parties involved a credit bid in the face of competing claims but with an acknowledged debt owing by the secured creditor.

[218] In *Romspen Mortgage Ltd Partnership v. 3443 Zen Garden Limited Partnership,* 2023 ABKB 730 [*Zen Garden*], Romspen sought summary judgment for the debt owing by the defendant under a loan used to finance a Texas development project. The defendant counterclaimed, alleging Romspen engaged in a predatory "loan-to-own" scheme and asserting, among other things, rights of set-off.

[219] In *Zen Garden* at paras. 37–39, the Court referred to the U.S. Chapter 11 proceedings against the debtor Zen Garden. The U.S. Bankruptcy Court approved a sale of the property to Romspen on the application of the Bankruptcy Trustee. Since the Trustee was investigating the loan-to-own allegations, the Court was required to address whether Romspen could credit bid its secured claim. Ultimately, the Bankruptcy Court allowed the sale to Romspen, which included a credit bid. However, the sale order granted by the U.S. Bankruptcy Court expressly: i) preserved the ability of the defendants to claim set-off, and ii) provided that if the credit bid amount were reduced, Romspen was required to pay to the Trustee the difference between the claim as ultimately allowed by a final judgment: *Zen Garden* at paras. 38–39.

[220] In *Bison Properties Ltd. (Re)*, 2016 BCSC 793 [*Bison*], on application by the receiver, the Court approved a sale of a hotel and related lands in which the purchase price included a credit-bid component (in addition to cash) (para. 36). A group of bondholders opposed the sale, asserting an unresolved statutory trust claim that they argued would give them priority (paras. 64 and 73).

[221] Accepting the receiver's recommendation, the Court in *Bison* found that the sale represented the greatest overall value for stakeholders, noting the purchasers' assumption of certain debts, the increased certainty for the hotel's continued operations and its employees, and the support of the secured lenders, who would likely oppose any alternative transaction. To protect the bondholders' position, the Court directed that the full value of the extant trust claim be held in trust from the cash proceeds pending final resolution. A distinguishing factor to this case is that the validity of the secured creditor’s claim was not in question and this was not a set-off issue, but rather a proprietary claim against the lands.

[222] In *American Iron v. 1340923 Ontario*, 2018 ONSC 2810 [*American Iron*], the Court considered a receivership application brought by the debtors' secured creditor, which also sought approval of a sale process with the secured creditor acting as a stalking horse bidder. The purchase price under the stalking horse bid was payable

partly by cash and partly by way of a credit bid. This case did not involve any set-off issues. A party opposed the transaction in the face of its unresolved civil claim against the secured creditor, arguing that approval would extinguish their claimed remedy of a constructive trust over the property.

[223] The Court in *American Iron* held that the outstanding claims, if successful, would likely only result in monetary damages. A monetary award would also be adequate in the circumstances and a constructive trust was not necessary. Similar to the result in *Bison,* the Court accepted the proposal of the secured creditor to have the receiver hold net funds from the sale of the properties in trust pending a determination of the outstanding action. As in *Bison*, there was no challenge to the validity of the secured claim but rather a claim impeaching the title to the property. The stalking horse bid was in any event unsuccessful for other reasons.

[224] Lastly, in *Atlantic Sea Cucumber Limited (Re)*, 2024 NSSC 214 [*Atlantic Sea Cucumber*], the Court stayed a sales process due to an unresolved priority dispute and the secured creditor's intention to credit bid (paras. 48–50). However, the Court emphasized that there was no evidence of asset deterioration or other prejudice, noting that critical operating licences were secure, inventory value was stable, and no "financial prejudice" to the estate would result from delaying the process (paras. 51–53). The Court expressly noted that if there were any changes in terms of, among other things, asset endangerment, delays in the resolution of the security challenge, or other facts that could materially adversely affect the estate, those concerns could be addressed.

[225] I agree with the Monitor that, unlike the facts in *Atlantic Sea Cucumber,* the circumstances facing the stakeholders here involve significant, time-sensitive risks as discussed above, including structural concerns with the Property, escalating site-preservation costs, and the possibility that the City may decline to issue the New Building Permit. These present risks were not present in *Atlantic Sea Cucumber* and represent factors that strongly favour approval of the Transaction now on an urgent

basis, including permitting Romspen to credit bid a portion of the indebtedness owing by the Alderbridge Group.

[226] I agree with the Monitor that the prejudice to the Alderbridge Group can be described as potentially reducing the Alderbridge Group's set-off claim against Romspen. In that event, they would have to pursue their claims directly against Romspen, if resolved in their favour and if they secure a damage award in an amount so as to reduce Romspen's debt below the Credit Bid Amount. However, if the Transaction is approved, their damages claims in the Related Actions are unaffected and they may continue to pursue Romspen for those claims. It is simply untrue to state, as they do that, if the Transaction is approved and if they successfully reduce the net claim owing to Romspen to a nominal amount, they will "have no damages claim against Romspen at all".

[227] I appreciate that, if the Transaction is approved and completes, the opposing parties lose the ability to have the Property sold to another party for cash, which, presumably would be available for distribution to them or their affiliates. However, as I discussed above, there is no prospect of any cash offer that the Monitor views as worth pursuing given the level of Romspen's undisputed advances.

[228] Even so, a fire sale under a cash offer would only reduce Romspen's debt by a very diminished amount. And having any net sale proceeds from a cash offer would have the same effect, as opposed to the greater reduction of the debt under the Credit Bid.

[229] The prejudice to Romspen – the presumptive first-ranking secured creditor who has advanced $143.6 million – is the potential risk and prejudice which the Monitor describes as a "catastrophic destruction of value of the Property" if the Property is simply maintained into the future or sold to a third party well below the amount of even its advances.

[230] The Monitor is unaware of any means by which to protect Romspen from the above prejudice and the opposing parties have not suggested any either.

[231] There is clearly detriment to Romspen if the Transaction is not approved, in addition to the detriment of the City and any other stakeholders with an interest in seeing the project completed as soon as possible.

[232] In the Monitor's view, waiting any longer to conclude a transaction is not a viable option. I agree. There is no expectation that the Related Actions will be resolved in the near term (and may take years to be resolved), which delay entails risk in relation to the preservation of value for the Property.

[233] The opposing parties emphasize that they are not opposed to a transaction, just *this* Transaction. However, the Transaction is the *only option* before the Court now. Contrary to the submissions of the Alderbridge Group and GEC, I am not in a position to grant an order approving the AVO in favour of Romspen as an “all cash offer” for the same amount as the Credit Bid Amount with the full purchase price to be paid into court pending the outcome of the Related Actions. That is not the transaction that is before the Court.

[234] The opposing parties have not offered any viable alternative other than the Transaction. They offer no solution to the ongoing risks and concerns regarding the Property, save to emphasize that the City has not appeared on this application to express any of their concerns. To the contrary, the City’s concerns are set out in detail in the Monitor’s Report and the many previous reports. They emphasize the Monitor’s statement at this hearing that there is no “imminent” risk to the Property – yet the risk still exists and, in my view, must reasonably be addressed before that risk is realized with its undoubtedly significant negative consequences.

[235] The opposing parties are also content to have others bear the cost of these ongoing proceedings. They offer no financial support of the ongoing costs, which are significant.

[236] The Alderbridge Group argue that since the “net amount” owed to Romspen, if any, is yet to be determined, it may well be the case that Romspen is “using the Developer’s money to inflate the price of this sale”. However, this argument cuts

both ways. Romspen says that the Alderbridge Group is playing with money that is not theirs and essentially, they are “rolling the dice” with no ante or price to be paid and where that price is being borne ostensibly by Romspen as the first ranking secured creditor.

[237] In my view, Romspen’s argument has more merit in the face of the admitted advances and interim financing and the fact that the Alderbridge Group’s claims are as yet unproven, if they will ever amount to anything at all. At the very least, the balancing of this aspect of the factors is neutral.

[238] I appreciated at the time of the Procedural Order in October 2023 that the opposing parties wished to exert the leverage they held in relation to signalling their opposition to any credit bid by Romspen and indicating that it would take years to litigate the claims in the Related Actions: *Procedural RFJ* at paras. 112–113 and 117. My sense is that they wish to continue to do so, although GEC has offered to mediate (which I have concluded is not appropriately ordered by the Court even if an application had been made to secure that relief).

[239] In fact, the Alderbridge Group succeeded in getting a years-long delay to address the issues, albeit with no real end in sight as yet. More importantly, however, circumstances have changed and the time has come to consider the only real option available going forward. The continued exertion of any leverage held by the Alderbridge Group and GEC comes at a price to the entire stakeholder group and, in my view, it is not reasonable at this time and cannot overcome those other interests given the circumstances. The paralysis of these proceedings cannot continue simply because the issues in the Related Actions are yet unresolved.

[240] The Alderbridge Group also alleges that there is prejudice to the 2ML Lenders. I see no basis for this submission since the 2ML Lenders are not before the Court and asserting any prejudice. The 2ML Lenders are now estimated to be owed about $135 million with interest accruing at about $1.7 million per month. As such, the combined first and second ranking mortgages total $290 million, including only Romspen’s advances and interim financing (not interest or costs).

[241] The plain inference arising from the lack of participation by the 2ML Lenders is that they see no prospect of any recovery beyond what Romspen is owed.

[242] The Guarantors also assert prejudice. They apparently also have guarantees outstanding with the 2ML Lenders. As such, if the 2ML Lenders cannot recover from the estate, it will likely seek recourse against the Guarantors, potentially exposing them to hundreds of millions of dollars in personal liabilities (subject to any arguments the Guarantors make in such a proceeding) that they say should properly have been discharged by the estate.

[243] In my view, the Guarantor's allegation of prejudice is a red herring. Accepting my conclusion that further delay is not an option, even the opposing parties' alternative position – moving to a cash only auction of the Property – would result in zero recovery for the 2ML Lenders and hence expose the Guarantors to the shortfall under the guarantees.

[244] The same goes for GEC who would have their third ranking mortgage removed from title in the event of any cash sale. GEC was owed approximately $94 million as of June 2021 plus interest of about $1.1 million per month since then. Recovery of any of this amount remains as dim as it was at the outset of these proceedings.

vii) Is the AVO Flawed For Failure to Include Conditions?

[245] The Alderbridge Group argues that the Monitor's failure to include protective measures in the proposed AVO – such as a holdback, trust mechanism or cash security – is a critical deficiency which would result in "irreversible prejudice" to them. They point to similar relief being granted in other contexts.

[246] The opposing parties argue this renders the Transaction unreasonable and unfair, citing examples such as in *Bison*, *American Iron*, *Atlantic Sea Cucumber* and *Zen Garden*.

[247] The Monitor expressed the view that approval and completion of the proposed Transaction would not result in any unfairness, and no additional protections are required for the opposing parties.

[248] The Monitor emphasizes the prejudice to Romspen as I have noted above which, in the Monitor's view, cannot be protected against by the opposing parties.

[249] Romspen agrees and states that if there is further delay on the basis of the existence of the Alderbridge Group's cross-claims, the opposing parties should be required to provide an undertaking as to damages and post security. Obviously, the Alderbridge Group is insolvent if it suffers any losses arising from that delay at the end of the day. Also, Romspen has no claim against GEC for amounts advanced to the Alderbridge Group.

[250] Romspen says that, at the very least, this would be required in the event of an application for an injunction outside of an insolvency proceeding, such as was considered in *Cactus*.

[251] In that respect, Romspen refers to other comments of S. R. Derham in *Set-Off* at p. 86, on the topic of how protections may be granted in favour of a secured creditor who is stayed in exercising its rights:

> An equitable setoff may not be allowed if the cross-claim depends upon the outcome of the taking of a long and complicated account, or if the determination of the cross-claim would otherwise involve considerable delay so that the plaintiff may find that he is not adequately compensated for being kept from his money for this period, though interest in some cases may be an adequate remedy if it turns out that some or all of the plaintiff's claim is not reduced by the setoff. There have also been exceptional cases in which the defendant was given leave to defend, or the plaintiff was restrained from exercising a right consequent upon non-payment, only on condition that the defendant pays all or part of the plaintiff's claim into court, or provides some other acceptable form of security pending the determination of the cross-claim. This has arisen particularly in the context of mortgages, where a mortgagor has sought to restrain the mortgagee from exercising his security rights consequent upon default on the basis of an alleged equitable setoff.
>
> [Emphasis added.]

[252] The Alderbridge Group argue that the Monitor is ignoring the fact that they are not being provided any protections in the AVO. They say that if they are successful at the end of the day in securing a net-positive damage award against Romspen, that is "cold comfort" since they will be prejudiced by the fact that the asset "being litigated over has been permanently transferred away". All of the opposing parties argue that the Monitor has not identified any means of protecting them from the consequences of approving the Transaction which they say is based on "illusory" consideration.

[253] The opposing parties also argue that they have no insight into the financial wherewithal of Romspen and that Romspen has not provided any evidence that it can satisfy any judgment against it in favour of them. They point to various annual statements of the Romspen Mortgage Investment Fund (the "Fund") from 2023 and 2025. They also point to certain news reports about potential financial difficulties in the Fund from January 2026, although the Fund is not the same entity as Romspen.

[254] I have considered the balancing of these competing submissions as to the lack of protective measures, including relative prejudice as discussed above and, overall, I agree that the appropriate balance is to refrain from imposing any conditions.

[255] Firstly, in addition to the factors already discussed, I have considered the fact of Romspen's debt and security, as set out above.

[256] Secondly, there is no doubt that the further proceedings will involve a determination of the issues raised and considerable delay, while the secured debt (albeit contested as to interest and costs) continues to grow at a ferocious pace. The ongoing interest under Romspen's debt is $3.3 million per month.

[257] Thirdly, as above, approval of the Transaction does not affect the ability of the Alderbridge Group to pursue its claim and seek a damage award against Romspen which may be set-off against Romspen's claim. The same goes for GEC although no set-off issues arise in respect of its claims.

[258] Thirdly, I do not see the issue of recovering any judgment against Romspen by the opposing parties as a significant concern in the face of the *CCAA* objectives in this proceeding. These are issues faced by any litigant. While there are measures to address those issues in certain circumstances, such relief is extraordinary. In the ordinary course, a litigant is not entitled to "secure" their potential judgment in advance.

[259] The opposing parties' arguments relating to a recovery of any judgment against Romspen are similar to the arguments that were addressed and rejected in *CSAME*:

> CSAME expresses a concern that, if OneUnited is permitted to credit bid, then any judgment that CSAME may ultimately obtain on the counterclaims will or may be uncollectible; credit bidding would create a credit risk. The claim against which the counterclaim would be satisfied would already have been expended, at least in part.
>
> While I agree that credit risk is sometimes cause to disallow credit bidding, I disagree that it is a valid basis here. Credit risk is cause for disallowance of credit bidding when the creditor's own claim is in dispute. As a general rule, a secured creditor should not receive payment on its claim before objections to the claim are resolved; otherwise, estate assets may be distributed in satisfaction of a claim that may later be deemed invalid, at which point the "creditor" may be unable or unwilling to return the distribution to the estate, and the estate may have to expend scarce funds to recover it—if it is able to mount such an effort at all. Here, there is no risk of a distribution on an invalid claim; instead there is a risk that an untested counterclaim will go unsatisfied. CSAME would be using a denial of credit bidding as, in essence, a form of prejudgment security, a purpose that I doubt it was intended to serve.

[260] I agree that the opposition to the Credit Bid and the alternative options suggested by those parties cannot be an indirect way of securing an amount before judgment. Protective measures are not a backdoor means by which to secure a claim under equitable remedies (such as an injunction) where the usual considerations under the test are not addressed (such as an undertaking as to damage and whether a monetary judgment will suffice).

[261] There is no evidence to suggest that Romspen would be unable to satisfy any judgment obtained by the Alderbridge Group or GEC.

[262] The opposing parties take exception to the fact that RIC Inc. is the ultimate Purchaser. They argue that RIC Inc. has no assets currently and in any event, will be immunized against any liability found against Romspen in the Related Actions after it acquires title to the Property. However, it is not uncommon at all for a real estate construction development to be put under the auspices of a single purpose company. There is nothing nefarious about the fact that the Purchaser is a new company, particularly given the involvement of Onni in the development.

[263] More to the point, the continuation of the development will no doubt require RIC Inc. to obtain more financing to create the value that will be represented in the completed development and there is no apparent reason why the Alderbridge Group and GEC should benefit from that net increase in value.

[264] It must be emphasized that GEC has no set-off claim against Romspen. I accept that GEC has a potential claim against Romspen based on whether it can establish the implied term in the Subordination Agreement and also prove a breach of that term. However, in that regard, GEC stands as a normal litigant who presumptively has no right to require a party to place in trust or preserve its assets pending the establishment of any potential claim.

[265] GEC does not assert that they have any right to require this Court to backstop their claim through, for example, a Mareva injunction. It remains the case that any judgment obtained by GEC against Romspen would be recoverable in the usual course. I cannot see that protecting GEC in these circumstances to preserve assets for any potential judgement can overwhelm the *CCAA* objectives here.

[266] GEC also takes exception to para. 10 of the draft AVO which provides that the vesting of the Alderbridge Group's interest in the Purchased Assets in the Purchaser is binding on any trustee in bankruptcy that may be appointed with respect to the Alderbridge Group and shall not be void or voidable by any creditors, nor be subject to attack under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or any other federal or provincial legislation.

[267] I see no merit to this argument. This provision in the draft AVO is standard for any vesting order in this province. It is meant to provide clarity and certainty to any purchaser that the ongoing proceedings or any new insolvency proceedings cannot be used to attack the transaction.

[268] It remains the case that I am approving the Transaction by my court order. If the opposing parties wish to challenge the AVO (and hence approval of the Transaction), their remedy is an appeal. It is not a later collateral attack on the Transaction which undermines the purpose and effect of the AVO.

viii) Is the RVO Structure Appropriate?

[269] Finally, since the AVO involves an aspect of an RVO (i.e. it seeks the vesting, transfer and assignment of the Excluded Assets and Claims to Alderbridge GP as “ResidualCo") it remains to be determined whether that aspect of the Transaction is appropriate.

[270] This Court has jurisdiction to grant an RVO pursuant to ss. 11 and 36 of the *CCAA*. In addition to the s. 36(3) and *Soundair* factors discussed above, in the usual fashion, I have considered the factors outlined by Justice Penny in *Harte Gold Corp. (Re)*, 2022 ONSC 653 *[Harte Gold]* at para. 38, being:

1) Is the RVO necessary?

2) Does the RVO structure produce an economic result that is at least as favourable as any other viable alternative?

3) Is any stakeholder worse off under the RVO structure than they would have been under another viable alternative? and

4) Does the consideration being paid reflect the value of the intangible assets being preserved under the RVO?

[271] No stakeholder, including the opposing parties, objects to the RVO structure. I agree that the benefits to the estate’s stakeholders by employing such a structure are manifest.

[272] I agree with the Monitor's assessment of the *Harte Gold* factors, specifically:

a) The RVO is necessary. The Alderbridge Group operates a real estate development project, which is subject to the DP issued by the City and the pending application for the New Building Permit. The proposed Transaction structure avoids the inherent delays, costs and closing risks associated with obtaining the City's consent to the assignment of certain Permitted Encumbrances or the requirement under certain Permitted Encumbrances to enter into an assumption agreement directly with the City, including in relation to certain covenants on title.

   Further, the Transaction structure avoids the requirement to pay property transfer taxes, which would otherwise result in a significant tax liability based on current and anticipated assessed property values.

   The Purchaser is not prepared to complete the Transaction under an alternative structure, nor is Romspen prepared to support a plan of arrangement under the *CCAA* where there is insufficient value to repay its indebtedness in full.

b) The RVO Provides the Most Favourable Result. The Monitor states that the RVO mechanism provided more benefits to the stakeholders than the alternative of an asset sale.

   The proposed Transaction provides a going concern outcome as a result of the RVO. The Transaction contemplates the Purchaser acquiring the Property, as well as all associated permits and other development documents, including the pending application for the New Building Permit. If the Transaction is not approved, there is a substantial risk that the City will not issue the New Building Permit with attendant loss of value, delay and costs.

   Further, the Purchased Assets are being purchased on an "as is, where is" basis, including subject to any associated environmental liabilities, which are

therefore being assumed by the Purchaser. The Purchaser is also assuming certain Assumed Agreements in respect of the Property, as well as all liabilities of the Alderbridge Group, whether arising before or after the Closing Date, under the Assumed Agreements. The Transaction therefore benefits the Alderbridge Group's creditors, the public, and other stakeholders, and serves the remedial purpose of the *CCAA*.

c) No Stakeholder is Worse off Due to the RVO. The Monitor is supportive of the proposed Transaction structure and is of the view that no stakeholder will be worse off under the Transaction or AVO than any other viable alternative. In many of the cases which have approved RVOs, the courts have observed that RVO transactions often result in claims of unsecured creditors being transferred to a "ResidualCo", resulting in no recovery for those creditors. However, this arises from the value of the assets, not from the RVO process itself. As such, unsecured creditors are treated no differently than if the Transaction proceeded through an alternative mechanism, such as an asset purchase.

   While certain of the Alderbridge Group's creditors' claims will be transferred to Alderbridge GP, those creditors would not have received any distribution from any other form of transaction, whether by an asset purchase structure or through a liquidation in receivership or bankruptcy given the amount of Romspen's secured debt. As such, those subordinate creditors are not prejudiced or worse off by the Transaction proceeding through an RVO.

d) The Consideration Reflects the Value of the Property. The consideration of the Transaction reflects the value of the Property, which was marketed by JLL and the Monitor in accordance with the Second SISP following the unsuccessful Initial SISP. The Sales Processes confirm that no viable alternative is available, and the Transaction therefore reflects the only realizable and market-tested value of the Property.

> The value of the Property would be significantly eroded if any new owner were unable to complete the project using the existing DP and pending New Building Permit. Accordingly, the consideration being paid under the proposed Transaction reflects the value of those intangibles.

[273] For all of the foregoing reasons, I find that each of the *Harte Gold* factors is satisfied and favours approving the Transaction and granting the AVO.

L. CONCLUSION AND ORDER

[274] For all of the foregoing reasons, and after a balancing of all of the competing interests at stake here under s. 36(3) of the *CCAA*, I agree with the Monitor's view that it is appropriate to proceed with the Transaction as contemplated by the PSA at this time. I am exercising my discretion to approve the AVO on the terms sought.

"Fitzpatrick J."