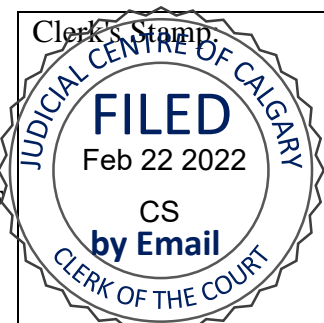


C23899

ESTATE NUMBER 25-2802560

Entered



COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERTEX DOWNHOLE LTD.

DOCUMENT **Bench Brief of the Applicant**

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March 4 2022
Justice Horner

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT

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**APPLICATION BEFORE JUSTICE K.M. HORNER
MARCH 4, 2022 AT 2:00 PM ON THE COMMERCIAL LIST**

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I. INTRODUCTION

1. This is the Bench Brief of the Applicant, Vertex Downhole Ltd. ("**Vertex**" or the "**Applicant**") in support of its application (the "**Application**") seeking Orders, among other things:

- (a) pursuant to section 64.2 of the *Bankruptcy and Insolvency Act*,¹ granting a first priority charge over Vertex's Property which shall not exceed the amount of \$200,000 (the "**Administration Charge**") in favour of the Applicant's counsel, the Proposal Trustee and the Proposal Trustee's counsel (collectively, the "**Administrative Professionals**");
- (b) pursuant to section 50.4 of the *BIA*,² extending the period of time within which Vertex is required to file a proposal to its creditors (the "**Proposal Period**") up to and including April 18, 2022 (the "**Stay Extension**");
- (c) authorizing Vertex and the Proposal Trustee to implement the sales and investment solicitation process (the "**SISP**") substantially in the form attached as Appendix "1" to the SISP Order and all steps and actions required in connection with the SISP; and
- (d) substituting MNP Ltd. ("**MNP**") in place and stead of Grant Thornton Ltd. ("**GTL**") as proposal trustee of Vertex (each of MNP and GTL in such capacity, the "**Proposal Trustee**").

II. BACKGROUND

2. On February 4, 2022, Vertex commenced the within proceedings (the "**NOI Proceedings**") by filing a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *BIA* with the Office of the Superintendent of Bankruptcy. GTL was the original Proposal Trustee and is presently the Proposal Trustee.

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, at s. 64.2 ("**BIA**") [Tab 1]

² *BIA* at s. 50.4 [Tab 1]

3. Vertex is a Canadian Controlled Private Corporation, incorporated pursuant to the laws of the Province of Alberta with its registered office located in Calgary, Alberta. Vertex is the parent entity of a group of vertically-held Delaware corporations (collectively, the "**Vertex Group**").

4. Vertex, as part of the Vertex Group, is an integrated oil and gas service company with a product base uniquely designed to support downhole drilling.

III. FACTS

5. The facts in support of Vertex's Application are set forth in Affidavit No. 1 of Craig Flint, sworn February 22, 2022 ("**Affidavit No. 1**"). Capitalized terms not otherwise defined herein have the meaning set forth in Affidavit No.1., Vertex's Application, or the First Report of GTL.

A. Administration Charge

6. Vertex seeks the Administration Charge over its Property to secure the fees and disbursements of the Administrative Professionals in the aggregate amount of \$200,000. The amount of the Administration Charge contemplates that the Administrative Professionals will be paid on a current basis during the NOI Proceedings.

B. Stay Extension

7. The Proposal Period is set to expire on March 4, 2022. Vertex requests the Stay Extension of 45 days to April 18, 2022, which would provide it with the time needed to, among other things:

- (a) commence and implement the SISP; and
- (b) advance the terms of a proposal for to be considered by Vertex's creditors.

8. The Stay Extension is critical to Vertex's ability to make a viable proposal to its creditors.

C. Sales Process

9. Vertex, in consultation with MNP and HSBC, and with input from GTL, has developed the SISP in order to facilitate an open, fair and efficient process to solicit bids for Vertex's business and its Property. Vertex is of the view that the SISP is in the best interests of Vertex and its stakeholders.

10. GTL, MNP, and HSBC support the SISP.

D. Substitution of the Proposal Trustee

11. In November 2021, HSBC engaged MNP as its financial advisor. From and after that time, Vertex has worked in good faith with MNP to provide information to HSBC.

12. When Vertex filed the NOI, GTL was named as Proposal Trustee. HSBC subsequently advised Vertex of its desire to substitute MNP as Proposal Trustee in place and stead of GTL.

13. Vertex has agreed to this substitution and seeks an Order of this Honourable Court to effect this substitution to avoid the calling of an unnecessary meeting of creditors for such purpose.

IV. ISSUES

14. This Bench Brief addresses the following issues at the Application, namely whether this Honourable Court should:

- (a) grant the Administration Charge;
- (b) grant the Stay Extension; and
- (c) substitute the Proposal Trustee.

V. LAW AND ARGUMENT

A. The Administration Charge

15. Vertex seeks the Administration Charge to secure the fees of the Administrative Professionals, whose services are critical to these proceedings. This Administrative Charge is to rank in priority to all other security interests in Vertex's Property and assets.

16. The *BIA* confers the statutory jurisdiction on this Court to grant the Administration Charge:

64.2 (1) Court may order security or charge to cover certain costs: On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1)

is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2 (2) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.³

17. Administration Charges have been approved in *BIA* proposal proceedings where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the *BIA*.⁴

18. In granting an Administration Charge, Courts have considered, among other things, the lack of opposition from an insolvent entity's senior secured creditor.⁵

19. Vertex submits that this is an appropriate circumstance for this Honourable Court to grant the Administration Charge with priority over any pre-existing security interests and other encumbrances. The quantum of the proposed Administration Charge is both fair and reasonable given the size and complexity of Vertex's business. The Administrative Professionals have played, and will continue to play, a critical role in these proceedings.

20. Accordingly, Vertex respectfully submits that this Honourable Court should exercise its discretion to grant the Administration Charge.

B. Stay Extension

21. Vertex filed the NOI on February 4, 2022. By operation of section 50.4(8) of the *BIA*, Vertex is required to file a proposal within 30 days unless it otherwise obtains an extension of time from the Court within that 30-day period.

³ *BIA*, at s. 64.2 [Tab 1].

⁴ *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at paras 32-33 [Tab 2]

⁵ *Electro Sonic Inc. (Re)*, at para 12. [Tab 3]

22. Pursuant to section 50.4(9) of the *BIA*, before the expiry of the Proposal Period, a debtor in a proposal proceeding may apply to the court for an order extending the time to file a proposal by a maximum of 45 days and the court may extend the time if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.⁶

23. In order to advance a proposal to present to Vertex's creditors, Vertex is seeking the Stay Extension to April 18, 2022. Vertex respectfully submits that the Stay Extension ought to be approved for, among others, the following reasons:

- (a) Vertex is acting in good faith and with due diligence;
- (b) the Stay Extension is required in order to advance a proposal for the benefit of Vertex's stakeholders;
- (c) without the Stay Extension, Vertex will have no ability to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the Stay Extension is granted;
- (d) Vertex has engaged with GTL, MNP and its stakeholders;
- (e) the Stay Extension is necessary for Vertex to implement the SISP; and
- (f) GTL as Proposal Trustee supports the Stay Extension.

24. Vertex respectfully submits that this Honourable Court should exercise its discretion to grant the Stay Extension.

⁶ *BIA* at s.50(9) [Tab 1].

C. Substitution of Proposal Trustee

25. Section 14.04 of the *BIA* provides that "the court, on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee's place."

26. Vertex is not alleging cause in seeking to replace GTL with MNP, but rather seeks to substitute MNP for GTL to build consensus and harmony between Vertex and HSBC by giving effect to HSBC's desire that MNP should act as Proposal Trustee.

27. Pursuant to s.66 (1), in so far as they are applicable, all provisions of the *BIA* apply with such modifications as the circumstances require to a Division I Proposal, such as these NOI Proceedings.⁷

28. Accordingly, given the relative size of HSBC's debt claim herein, HSBC very likely has the ability to call a first meeting of creditors in order to vote upon, among other things, the substitution of the Proposal Trustee pursuant to s.103(1) of the *BIA*.

29. Further, section 183 of the *BIA* provides this Court with "such jurisdiction at law and in equity as will enable [it] to exercise original, auxiliary and ancillary jurisdiction in bankruptcy".⁸

30. Vertex is seeking the substitution of the Proposal Trustee at the request of HSBC and in Order to avoid the calling of an unnecessary meeting of creditors for such purpose.

VI. CONCLUSION

31. For the reasons above, Vertex respectfully requests this the Honourable Court:

- (a) grant the Administration Charge, grant the Stay Extension, approve the SISP, and substitute the Proposal Trustee; and

⁷ *BIA*, at s. 66(1) [Tab 1]

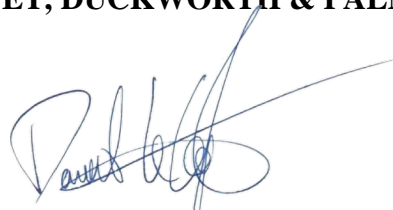
⁸ *BIA*, at s.183 [Tab 1]

- (b) grant such other ancillary relief as may be sought by Vertex at the hearing of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22ND DAY OF FEBRUARY, 2022

BURNET, DUCKWORTH & PALMER LLP

Per:



David LeGeyt / Ryan Algar
Solicitors for Vertex Downhole Ltd.

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<u><i>Bankruptcy and Insolvency Act, RSC 1985, c B-3</i></u>
2.	<u><i>Mustang GP Ltd. (Re), 2015 ONSC 6562</i></u>
3.	<u><i>Electro Sonic Inc. (Re), 2014 ONSC 942</i></u>