

COURT FILE NUMBER 2003-06728  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON



PLAINTIFFS (DEFENDANTS BY COUNTERCLAIM) **ROMSPEN MORTGAGE LIMITED PARTNERSHIP AND ROMSPEN INVESTMENT CORPORATION**

DEFENDANTS (PLAINTIFFS BY COUNTERCLAIM) **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC. AND DANIEL ALEXANDER WHITE**

PLAINTIFFS BY COUNTERCLAIM **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC. and DANIEL ALEXANDER WHITE**

DEFENDANTS BY COUNTERCLAIM **ROMSPEN MORTGAGE LIMITED PARTNERSHIP, ROMSPEN INVESTMENT CORPORATION, RICHARD WELDON and WESLEY ROITMAN**

COURT FILE NUMBER 1903-21473  
JUDICIAL CENTRE EDMONTON

APPLICANTS **LOT 11 LIMITED PARTNERSHIP by its general partner LOT 11 GP LTD., ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC. AND DANIEL ALEXANDER WHITE**

RESPONDENT **ROMSPEN INVESTMENT CORPORATION**

DOCUMENT **APPLICATION FOR SUMMARY JUDGMENT AND APPOINTMENT OF RECEIVER (COMMERCIAL LIST)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION  
OF PARTY FILING THIS  
DOCUMENT

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**NOTICE TO RESPONDENTS:**

This application is made against you. You are a Respondent.

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

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

Date: ~~March 30, 2021~~ May 5, 2021  
Time: 10:00am  
Where: **Edmonton Courts Centre**  
**1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2**  
Before Whom: **The Honourable Madam Justice D.L. Shelley**

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

**Remedy claimed or sought:**

1. Capitalized terms not defined herein shall have the same meaning as those terms expressly defined in the Affidavit of Wesley Roitman sworn on November 16, 2020.
2. The Applicants seek Orders for the following relief:
  - (a) a Declaration that each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White are in default under the terms of the Alberta Security and the Alberta Guarantees;
  - (b) to the extent necessary, an Order lifting the stay referenced in paragraph 2 of the Consent Order granted by the Honourable Mr. Justice J. Gill granted on October 25, 2019 in Court File No. 1903-21473;
  - (c) a Declaration that each of Zen Garden, GP, LP, Eco-Industrial, Absolute Energy; Absolute Environmental and White are in breach of the Order granted by the Honourable Associate Chief Justice K.G. Nielsen, as subsequently extended, on April 2, 2020;

- (d) an Order granting summary judgment in favour of Romspen pursuant to rule 7.3 of the *Alberta Rules of Court*;
- (e) an Order granting summary dismissal of the Counterclaim filed by Zen Garden, GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White pursuant rule 7.3 of the *Alberta Rules of Court*;
- (f) in the alternative, an Order striking out certain allegations advanced in the Counterclaim;
- (g) a Receivership Order appointing MNP as Receiver and Manager over the assets and undertakings of each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White;
- (h) in the alternative, an Order appointing MNP as Interim Receiver and Manager over the assets and undertakings of each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White;
- (i) to the extent necessary, an extension of the Nielsen Order;
- (j) in the further alternative, an Order for foreclosure in respect of the lands contemplated under the Mortgages;
- (k) in the further alternative, an Order for a judicial listing of the lands contemplated under the Mortgages; and
- (l) such further and other relief as this Honourable Court may deem appropriate.

**Grounds for making this application:**

The Mortgage and Security

3. Zen Garden, as borrower, and RMLP, as lender, entered into the Zen Garden Loan Agreement wherein RMLP agreed to advance to Zen Garden a loan of up to a maximum principal sum of USD \$125,000,000.00.
4. To evidence its indebtedness under the Zen Garden Loan Agreement, Zen Garden gave a Promissory Note to RMLP in the maximum principal sum of USD \$125,000,000.00.
5. As security for the Zen Garden Loan Agreement, Zen Garden granted various security instruments in the State of Texas (“the **Texas Security**”).
6. As further security for the Zen Garden Loan Agreement, Romspen obtained, among others, the following security instruments in the Province of Alberta:
  - (i) the Mortgages; and
  - (ii) the Alberta Security.
7. Each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White granted to Romspen the Alberta Guarantees.

8. The Mortgages included, among others, the following terms:
- (a) an event of default under the Zen Garden Loan Agreement or the Alberta Guarantees constitutes a default under the Mortgages;
  - (b) upon a default under the Mortgages, Romspen becomes entitled, among other things, to the following relief:
    - (i) the whole of the unpaid balance of the principal advanced under the Loan Agreement and interest thereon will become due and payable;
    - (ii) Romspen shall be entitled to immediately seek the appointment of a Receiver and Receiver-Manager over the lands subject to the Mortgages (the “**Lands**”) and add to the Mortgages all costs and expenses incurred by it in that regard;
    - (iii) Romspen shall be entitled to enter upon the Lands and make such arrangements for repairing or putting in order any building or other improvements on the Lands as it may deem expedient, with all costs, charges and expenses incurred by Romspen in doing so being secured by the Mortgages, being a charge on the subject Lands, and bearing interest at the Mortgages rate until paid;
    - (iv) Romspen shall be entitled to take such proceedings to realize on security given in respect of the Mortgages by foreclosure or otherwise; and
    - (i) Romspen shall be entitled to all fees and expenses incurred as the result of default under the Mortgages or with realizing on its security against the Lands, including legal costs on a solicitor and his own client, full-indemnity basis.
9. From time to time, Romspen advanced sums to Zen Garden pursuant to the terms of the Zen Garden Loan Agreement, the Texas Security, the Alberta Security the Texas Guaranty and the Alberta Guarantees.

#### Discharges, Default and Demand

10. Zen Garden has defaulted under the terms of the Zen Garden Loan Agreement. In particular, Zen Garden failed to make payments when due and owing.
11. As a result of Zen Garden’s default under the Zen Garden Loan Agreement, each of the Texas Security, the Alberta Security, and the Alberta Guarantees were also in default.
12. By correspondence dated October 11, 2019, Romspen demanded that, among others, Zen Garden, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White repay all amounts due and owing under Zen Garden Loan Agreement, the Alberta Security and the Alberta Guarantees, and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**Demand and Notice**”).
13. At the time that the Demand and Notice was issued, the amount owing under the Loan Agreement totalled USD \$87,865,453.79.

14. On October 25, 2019, each of Romspen, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White entered into a Consent Order, filed at the Court of Queen's Bench of Alberta – Judicial Centre of Edmonton, which, among other things, stayed any and all enforcement proceedings under the Demand and Notice.
15. Each of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White continued to breach the terms of the Alberta Security and the Alberta Guarantees.
16. In November 2019, White executed a Consent Receivership Order in Texas ("**Receivership Order**").
17. On March 22, 2020, Zen Garden was petitioned into Involuntary Bankruptcy in the United States by its creditors:
  - (i) Lyle America, Inc. d/b/a Glass.com of Illinois;
  - (ii) Austin Glass & Mirror, Inc.; and
  - (iii) ACM Services LLC.
18. At the time of Zen Garden's Involuntary Bankruptcy, each of GP and Eco-Industrial were independently in breach of the Mortgages in that, they had failed to pay outstanding property taxes totalling approximately CDN. \$800,000.00.
19. The Zen Garden Involuntary Bankruptcy is continuing in the State of Texas.
20. The outstanding property taxes, at the time of filing this application, now exceed \$1,385,000.00.
21. As a result of GP's and Eco-Industrial's default under the Mortgages, the Alberta Security and the Alberta Guarantees were also in default.
22. As of March 26, 2020, the amount owing to Romspen pursuant to the Mortgages and the Alberta Guarantees was USD \$96,760,975.69, with interest continuing to accrue at the rate of \$44,384.00, per diem thereafter (the "**Indebtedness**").

#### The Interim Monitor Order

23. On April 2, 2020, the Honourable Associate Chief Justice K.G. Nielsen granted the Nielsen Order which entitled Romspen to appoint an Interim Monitor over each of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial in favour of Romspen.
24. The Nielsen Order was extended by the Honourable Mr. Justice S.G. Hillier on April 30, 2020.
25. The Nielsen Order was further extended by consent (filed June 19, 2020, September 22, 2020, January 6, 2021, February 3, 2021 and March 1, 2021).
26. Each of GP, LP, Absolute Energy, Absolute Environmental, and Eco-Industrial have repeatedly breached, and continue to breach, the terms of the Interim Monitor Order.

### Summary Judgment

27. Zen Garden, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial, and White have no defence to Romspen's claim as set out in the Statement of Claim.
28. There is no merit to the Counterclaim filed by Zen Garden, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial, and White.
29. In the alternative, there is no merit to a part of the Counterclaim filed by Zen Garden, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial, and White.
30. The record before the Court is sufficient to allow the Court to make the necessary findings of fact for summary judgment of the Statement of Claim and summary dismissal of the Counterclaim.
31. The record before the Court is sufficient to allow the Court to apply the law to the facts.
32. Summary judgment of the Statement of Claim in favour of Romspen, and summary dismissal of the Counterclaim, is a more expeditious and less expensive means to achieve a just result than proceeding to trial.

### Requirement for the Appointment of Receiver or Interim Receiver

33. Zen Garden has failed to repay the Indebtedness, is an involuntary bankrupt in the United States, is unable to pay its obligations generally as they become due and has presented no viable plan or course of action to repay the Indebtedness or address its immediate liquidity requirements.
34. None of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial or White have presented any viable plan or course of action to repay the Indebtedness.
35. The appointment of a Receiver and Receiver-Manager or, in the alternative, an Interim Receiver over the assets of each of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White is just, equitable and convenient in the circumstances.

### **Material or evidence to be relied on:**

36. The Affidavit of Wesley Roitman, filed March 31, 2020.
37. The Affidavit of Wesley Roitman, filed April 1, 2020.
38. The Affidavit of Wesley Roitman, filed April 20, 2020.
39. The Affidavit of Wesley Roitman, filed April 22, 2020.
40. The Affidavit of Wesley Roitman, filed April 28, 2020.
41. The Affidavit of Wesley Roitman, filed June 15, 2020.
42. The Affidavit of Wesley Roitman, filed November 16, 2020.
43. The Affidavit of Wesley Roitman, filed November 19, 2020.

44. The Affidavit of Wesley Roitman, filed December 21, 2020.
45. The Questioning of Wesley Roitman, conducted April 21, 2020.
46. The Questioning of Wesley Roitman, conducted November 16, 2020.
47. The Questioning of Wesley Roitman, conducted February 12, 2021.
48. The Affidavit of Daniel Alexander White, sworn April 28, 2020.
49. The Affidavit of Daniel Alexander White, filed July 2, 2020.
50. The Affidavit of Daniel Alexander White, filed November 13, 2020.
51. The Questioning of Daniel Alexander White, conducted December 16, 2020.
52. The Affidavit of Gina Campbell, affirmed December 14, 2020.
53. The Consent to Act as Receiver executed by MNP, filed.
54. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

55. *Alberta Rules of Court*, AR 124/2010, and in particular Part 1, Rules 6.3, 7.3, 11.25, 11.27 and 11.29.
56. *Bankruptcy and Insolvency General Rules*, CRC, c 368, and in particular Rules 3, 6, 9 and 13.

**Applicable Acts and Regulations:**

57. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and in particular Part XI.
58. *Judicature Act*, RSA 2000, c J-2, section 13.

**Any irregularity complained of or objection relied on:**

59. N/A

**How the application is proposed to be heard or considered:**

60. As directed by the Court having regard to the COVID-19 pandemic.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

Subject to the directions of the Court having regard to the COVID-19 pandemic, if you do not come to Court either in person or by your lawyer, the Court may give the Applicant what it wants in your absence. You will be bound by any order that the Court makes. If you want to take part in this Application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an Affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.