COURT OF APPEAL OF ALBERTA

Registrar's Stamp



COURT OF APPEAL FILE NUMBER:	2601-0256AC
TRIAL COURT FILE NUMBERS:	24-340057 and 25-3400059 (Estate No. 25-640059; Commercial List No. B301-400059)
REGISTRY OFFICE:	CALGARY
	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 ADVEN INC. AND ADVEN INDUSTRIES INC
APPLICANTS:	ADVEN INC and ADVEN INDUSTRIES INC.
STATUS ON APPEAL:	RESPONDENTS
STATUS ON APPLICATION:	APPLICANTS
RESPONDENTS:	SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC and 2815793 ALBERTA LTD.
STATUS ON APPEAL:	APPELLANTS
STATUS ON APPLICATION:	RESPONDENTS

DOCUMENT: **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**McMillan LLP** 1700, 421 – 7th Ave SW Calgary, AB T2P 4K9 Attention: Preet Saini / Tevia R.M. Jeffries Telephone: (403) 531-4716 Fax: (403) 531.4720 Email: preet.saini@mcmillan.ca tevia.jeffries@mcmillan.ca File No. 327410 **Counsel for the Applicants / Respondents**

and

CONTACT INFORMATION FOR ALL OTHER PARTIES:	**Blue Rock Law LLP** 700 – 215 9 Avenue SW Calgary, Alberta T2P 1K3 Attention: David W. Mann, KC / Scott Chimuk Email: David.mann@bluerocklaw.com / scott.chimuk@bluerocklaw.com **Counsel for the Respondents / Appellants, Secure Property Development & Investment PLC and 2815793 Alberta Ltd.** **Fasken Martineau DuMoulin LLP** Suite 3400, 350 7 Avenue SW Calgary, AB T2P 3N9 Attention: Robyn Gurofsky/ Tiffany Bennett Email: rgurofsky@fasken.com / tbennett@fasken.com **Counsel to the Proposal Trustee, Alvarez & Marsal Canada Inc.** **Warren Kachur Osadetz LLP** 425-1122 4 Street SW Calgary, AB T2R 1M1 Attention: Martin Rejman Email: mrejman@wkolaw.ca **Counsel to the Interim Lender, 2841034 Alberta Ltd.**

WARNING
If you do not come to Court on the date and time shown below 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 intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENTS: SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC and 2815793 ALBERTA LTD.

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

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

Date:	September 23, 2026
Time:	9:30 am
Where:	Suite 2600, 450 – 1 Street SW Calgary, AB T2P 5H1
Before:	A Single Justice of the Court (Rule 14.37)

Nature of Application and Relief Sought:

A. Relief sought

1. This application is brought by the Respondents to the appeal, AdvEn Inc. and AdvEn Industries Inc. (together, "**AdvEn**").

2. AdvEn seeks an order striking the appeal on the basis that:

   a. the order under appeal ("**Order**") does not fall within section 193(a) or 193(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") and permission to appeal under section 193(e) of the BIA is therefore required; and

   b. the Appellants have neither sought nor obtained permission, with the result that the appeal is of no force and effect pursuant to Rule 31(2) of the *Bankruptcy and Insolvency General Rules*, CRC, c 368 (the "**BIA General Rules**") or Rule 14.37(c) of the *Alberta Rules of Court*.

3. In the alternative, AdvEn seeks orders from this Honourable Court that permission is required pursuant to section 193 of the BIA or Rule 14.5 of the *Alberta Rules of Court*, that the time to seek permission to appeal has expired and should not be extended, or if an extension is granted, that permission is refused.

4. In the further alternative, and in the event the Court permits the appeal to proceed, AdvEn seeks an order lifting or varying the automatic stay under section 195 of the BIA so that the Order, the SISP (as defined in the Order) and the court-ordered charges may take effect pending disposition of the appeal.

B. Introduction

5. The appellants, Secure Property Development & Investment PLC and 2815793 Alberta Ltd. (the "**Appellants**") appeal a discretionary order considered procedural in nature. The order was made in AdvEn's proceedings commenced pursuant to section 50.4(9) of the BIA (the "**Proposal Proceedings**").

6. The Appellants were served with AdvEn's application materials for King's Bench hearing on nine (9) prior days notice. The Appellants filed no responding evidence other than a secretarial affidavit containing a proposed interim financing facility. The Appellants' interim financing facility came with conditions: primarily, that AdvEn revise its proposed Sale & Investment Solicitation Process ("**SISP**") with unqualified amendments. AdvEn had reached agreement on an interim financing facility with 2841034 Alberta Ltd. (the "**Interim Lender**") prior to the hearing before the Chambers Justice. The Interim Lender did not oppose approval of the SISP that was created in consultation between AdvEn and Alvarez & Marsal Canada Inc. (the "**Proposal Trustee**").

7. The Appellants sought an adjournment of AdvEn's application. The Chambers Justice exercised his discretion to refuse that request noting the amount of notice that the Appellants had. The application proceeded. *The Appellants then consented to the relief being sought by AdvEn* except that they sought to approve their interim financing facility to fund the restructuring process. The result was two competing lenders seeking to fund a restructuring process but otherwise consenting to the relief. The Court approved the Interim Lender's loan facility. Now, the Appellants seek to undermine the entire restructuring process by filing an appeal and evoking the automatic stay pursuant to section 195 of the BIA. Their logic is difficult to understand considering that the restructuring process is now being funded regardless of who ultimately pays that amount.

8. The case law from this Court and superior courts from other provinces is clear: Permission to appeal an order of this nature pursuant to section 193 of the BIA is required. This appeal does not meet the test for permission to be granted. This appeal is exactly the type of disruption that the Courts have sought to avoid. AdvEn separately notes that this appeal involves (1) a decision respecting an adjournment, and (2) decisions

made on consent, both of which independently require permission to appeal pursuant to Rule 14.5 of the *Alberta Rules of Court*.

C. The Order Under Appeal

9. On August 26, 2026, the Appellants filed a Civil Notice of Appeal (the "**Appeal**"), to appeal part of the Order of the Honourable Justice Dunlop dated August 19, 2026 granting the application of AdvEn for various relief including:

    a. Procedural consolidation of the bankruptcy estates;

    b. Extension of time to file a proposal to its creditors under section 50.4(9) of the BIA;

    c. Approval of an Administration Charge in the amount of $500,000 and a D&O Charge in the amount of $100,000;

    d. Approval of the Interim Facility in the amount of USD $650,000 pursuant to the Interim Financing Agreement, with a corresponding Interim Lender's Charge; and

    e. Approval of the SISP,

    (all capitalized terms are as defined in the Order).

10. The Appeal seeks to appeal the approval of the Interim Facility and the corresponding Interim Lender's Charge, the Administration Charge, D&O Charge, and the SISP.

D. Basis for Relief Sought

11. AdvEn seeks its relief on the following basis:

    The Appeal Should Be Struck

    a. Under section 193 of the BIA, an appeal to the Court of Appeal lies as of right only where one of subsections 193(a) through (d) of the BIA applies; otherwise, the appeal lies only "by leave of a judge of the Court of Appeal" pursuant to section 193(e) of the BIA.

    b. Rule 31(2) of the BIA General Rules provides that where an appeal is brought

under section 193(e), the notice of appeal must include the application for permission to appeal. The Appeal is of no force and effect if it fails to comply with Rule 31(2) of the BIA General Rules.

c. The Appeal does not include an application for permission to appeal. The Appellants instead assert a right of appeal under section 193(c), and in the alternative section 193(a), purporting to reserve the right to seek permission only if required. Section 193(a) and 193(c) of the BIA do not apply. Permission is required under section 193(e), and as a result, the Appeal is of no effect.

d. Section 193(a) of the BIA does not provide for a right of appeal as no future rights of the Appellants are engaged by the Appeal. The Appellants do not identify any legal right that did not exist when the Order was granted but will arise at some point in the future. Procedural fairness, which the Appellants raise as an issue arising from the adjournment refusal, is a present right at the hearing, not a future right. Section 193(a) accordingly does not apply.

e. Further, section 193(c) does not apply to orders that are procedural in nature, orders that do not bring into play the value of the debtor's property, or orders that do not result in a loss. Additionally, the Appellants have not established that there are any proven actual loss exceeding $10,000.

f. The Order is procedural in nature. The approval of various charges on the bankrupt estate, including the priority of those charges, constitutes a procedural order necessary to monetize the estate. The approval of a SISP where the successful bid still requires court approval is likewise procedural, as it is not a final determination on economic interests.

Permission Should be Refused

a. The Appellants' grounds of appeal lack *prima facie* merit and are directed principally at Justice Dunlop's exercise of discretion on fact-intensive matters: the decision to refuse an adjournment, the selection of the Interim Lender’s proposal over the Appellants’ competing proposal, and the approval of the SISP. The

decision to grant those orders was a discretionary decision of a supervising judge managing an insolvency proceeding, and is entitled to a high degree of deference.

b. The proposed appeal does not raise any issue of general importance to insolvency practice or to the administration of justice. It is a fact-specific complaint about scheduling, the adjournment refusal, and the selection of one interim lending facility over another.

c. The SISP is underway, with Phase I bids due September 25, 2026, a definitive agreement deadline of October 21, 2026, and the approval hearing scheduled for the week of November 2, 2026. Granting permission at this stage would immediately disrupt the SISP timeline, and chill bidder interest, to the detriment of every stakeholder, including the Appellants themselves who have expressed an intention to bid.

Lifting or Varying the Automatic Stay

a. AdvEn and all their creditors will suffer irreparable harm if the stay is not cancelled including bankruptcy and cessation of operations, and that harm is greater than any harm the Appellants would suffer if the stay is not lifted. Without an interim financing facility, AdvEn will not have sufficient liquidity for another stay extension and will be deemed bankrupt as of October 3, 2026. The SISP will be delayed for months until an appeal is heard by which the restructuring may no longer be viable.

b. Against AdvEn's irreparable and immediate harm, the Appellants' prejudice is negligible at best. The Appellants sought to fund the restructuring process through their own interim financing facility. Now the Interim Lender will fund that process. The Appellants may still participate in the SISP and bid for the business of AdvEn. Alternatively, if the Appellants choose not to bid, the stay will harm their positions as secured creditors, if such positions are ultimately proven.

12. Such further and other relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

13. The Appellants do not have a right to appeal under section 193 of the BIA or Rule 14.5 of the *Alberta Rules of Court*.

14. The Appellants were required to seek permission to appeal and failed to do so.

15. The points of the Appeal are insignificant to the insolvency bar.

16. The points of the Appeal are not significant to the action itself.

17. The Appeal lacks *prima facie* merit.

18. The Appeal will unduly hinder the progress of the action.

19. The Appeal and the automatic stay will cause irreparable harm to AdvEn and its creditors and will not result in prejudice against the Appellants.

Material or evidence to be relied on:

20. AdvEn intends to rely upon:

    a. the order granted by the Honourable Justice Dunlop dated August 19, 2026 and filed August 21, 2026;

    b. the affidavit of Brenda Lewis-Besler, sworn September 14, 2026, containing the record, or such portions of the record as were before the Honourable Justice Dunlop at the hearing of the Application on August 19, 2026, specifically:

        i. Application filed by AdvEn on August 11, 2026, attached at Exhibit "A";

        ii. the Affidavit of Ingo Mueller filed by AdvEn on August 11, 2026, attached at Exhibit "B";

        iii. the First Report of the Proposal Trustee dated August 13, 2026 and filed on August 13, 2026, attached at Exhibit C"

        iv. the Affidavit of Amanda Urban filed by the Appellants, attached at Exhibit "D" (filed but not before Justice Dunlop);

v. the Affidavit of Jacques Demers filed by the Interim Lender, attached at Exhibit “E”;

vi. the Affidavit of Kary Heikoop filed by the Interim Lender, attached at Exhibit “F”;

vii. the Bench Brief of Law (without authorities) filed by AdvEn on August 21, 2026, attached at Exhibit “G”;

viii. a copy of the Order filed on August 21, 2026, attached at Exhibit “H”;

ix. a transcript of the proceeding before Justice Dunlop on August 19, 2026, attached at Exhibit "I”; and

x. a copy of the Affidavit of Service of the Application materials without the exhibits, attached as Exhibit “J”,

c. such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and rules:

21. AdvEn intends to rely upon and refer to:

a. Part 14, Division 4 of the *Alberta Rules of Court*, Alta Reg 124/2010;

b. the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular sections 193 and 195;

c. the *Bankruptcy and Insolvency General Rules,* CRC c 368, and in particular, sections 3 and 31(2);

d. the *Judicature Act*, RSA 2000, c J-2; and

e. such further and other Acts, Regulations and Rules as counsel may advise and this Honourable Court may permit.