



NO. S186120
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C - 36

- AND -

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57
and THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9

- AND -

IN THE MATTER OF
PURCELL BASIN MINERALS INC.,
BUL RIVER MINERAL CORPORATION,
GALLOWAI METAL MINING CORPORATION,
GRAND MINERAL CORPORATION,
JAO MINE DEVELOPERS LTD., and
STANFIELD MINING GROUP OF CANADA LTD.

PETITIONERS

APPLICATION RESPONSE

Application response of Highlands Pacific Capital LLC (the "**LLC Application Respondent**").

THIS IS A RESPONSE TO the notices of application of the Petitioners filed June 21, 2018.

PART 1: ORDERS CONSENTED TO

1. The LLC Application Respondent consents to the Sales Process Order, but only if it does not authorize credit bidding.

PART 2: ORDERS OPPOSED

2. None, provided it does not include credit bidding.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

3. None.

PART 4: FACTUAL BASIS

(a) Introduction

1. The factual basis for this Response is primarily set out in the Petition dated May 28, 2018 and filed by Purcell Basin Minerals Inc. ("**Purcell**"), Bul River Mineral Corporation, Gallowai Metal Mining Corporation, Grand Mineral Corporation, Jao Mine Developers Ltd., and Stanfield Mining Group of Canada Ltd. (the "**Petition**"), and Affidavit #1 of Brendan MacMillan, dated July 12, 2018 (the "**MacMillan Affidavit**").
2. These are highly unusual proceedings. The Petitioners are not operating companies, and not have operated since they emerged from their prior CCAA protection. It is not even a liquidating CCAA. There is no expectation that a sale of the assets will generate any liquid assets to allow the Petitioners to generate any cash to operate the business; even the evidence of CuVeras, LLC ("**CuVeras**") another application respondent (who the LLC Application Respondent says is being managed without due authority) has opined that third party investment is not likely in the contemplated sales process.
3. These proceedings appear to be a thinly veiled attempt to cram the extant litigation and disputes into a new CCAA proceeding, which is remarkable considering an order was made in the prior CCAA proceedings as recently as March of this year,
4. If the Petitioners are serious about a sales process, it should be designed to garner the most third-party interest possible, in an effort to get the business operating.
5. A sales process that is already not expected to garner any outside interest should not countenanced by this Court.
6. As the proper manager of CuVeras, the LLC Application Respondent is of the view that it would be in its best interests for the process to attract outside investment.
7. Not only do the Petitioners not have any funds, CuVeras appears to not have any, either.
8. Therefore, to the extent this Court feels it is appropriate to grant a sales process, it should not be one that discourages third party investments.

(b) The Petitioners are not Operating Companies

9. It is clear from the Petition that the Petitioners are not operating companies.
10. The stated purpose of these CCAA proceedings is purportedly to ensure the continued care and maintenance of the Gallowai Bul River Mine (the "**Mine**"), conduct a claims process, and then to propose a plan of compromise and arrangement to do one or more of the following:
 - (a) restructure the Petitioners' secured financing to allow the Petitioners to incur new secured borrowings;
 - (b) raise sufficient funds either through equity or debt financing to address the deficiencies in the Mines Act Permit Application identified by the B.C. Government, secure production permits, and achieve economic production; or
 - (c) enter into and seek approval of a strategic joint venture or partnership.

Petition, at paragraph 43

11. Alternatively, the Petitioners stated they seek to enter into a Court-supervised sale process for the Mine.

Petition, at paragraph 43

12. There is no evidence that the Petitioners have made any efforts to do anything but seek a sales process pursuant to which it is anticipated that CuVeras will be the only bidder.
13. Purcell acquired the Mine and the other Petitioners through a prior plan of arrangement in an earlier CCAA proceeding. However the Mine has not been commercially operated since its acquisition by Purcell.

Petition, paragraphs 5-7

14. Paragraph 8 of the Petition lists the major assets that comprise the Mine. These assets consist of, among other things, the Lands and the Camp (as defined therein).

Petition, paragraph 8

15. Ownership of these assets, namely the Lands and the Camp is unclear.

Petition, paragraph 9

16. At paragraph 12 of the Petition, the Petitioners stated that, as at May 25, 2018, they had no cash on hand, and that both Purcell and the Petitioners had been funded by 1974315 Alberta Ltd. since May, 2016.

Petition, paragraph 12

17. Despite having no cash on hand, and despite the fact that the Mine has not been commercially operated since its acquisition by Purcell, the Petitioners stated they have monthly expenses of approximately \$100,000. The Petitioners also claim that compliance with the Post Plan Fitzpatrick Orders (as defined in the Petition) dictates that they are unable to borrow any funds on a secured basis.

Petition, paragraphs 40-41

18. It is worth noting that the Post Plan Fitzpatrick Orders were issued to enforce the obligations willingly incurred by the Petitioners in the prior CCAA proceedings.
19. Notwithstanding the foregoing, the Petitioners now seek to enter into a Court-supervised sale process for the Mine.

(b) Loan to Purcell

20. The LLC Application Respondent is a creditor of Purcell.
21. As further detailed at paragraphs 2-6 of the MacMillan Affidavit, on or around April 25, 2016, the LLC Application Respondent and Purcell entered into a loan agreement pursuant to which the LLC Application Respondent agreed to provide a credit facility of up to CAD\$15,000,000.

The MacMillan Affidavit, at para 2

22. On or about November 7, 2016, Purcell and the LLC Application Respondent executed an Amended and Restated Senior Promissory Note.

The MacMillan Affidavit, at para 3

23. On or about November 7, 2016, Highlands and Purcell executed An Amended and restated Senior Promissory Note (the "**Amended and Restated Note**") for the purpose of, among other things, detailing the manner in which Highlands would document advances made to Purcell pursuant to the Loan, extending the maturity date of the Original Note and amending the interest calculations under the Original Note. Attached hereto and collectively marked as **Exhibit "B"** is a copy of the Amended and Restated Note, together with the Amended and Restated Note Term Sheet (the "**Term Sheet**"), both of which are dated November 7, 2016.

The MacMillan Affidavit, at paragraph 4

24. As set out in the Term Sheet, the material terms of the Amended and Restated Note included, *inter alia*, the following:

- (a) Highlands would provide the Loan Amount to Purcell, with advances to be made at Highlands' sole discretion;
- (b) interest on any outstanding payments owed by Purcell to Highlands pursuant to the Loan (the "**Indebtedness**") would accrue at the rate of 10% per annum;
- (c) the outstanding portion of the Indebtedness would become due and payable on January 31, 2017 (the "**Maturity Date**"), unless converted pursuant to the terms of the Amended and Restated Note;
- (d) in the event that I remained the President of Purcell, the Maturity Date would automatically be extended to July 31, 2017;
- (e) the repayment of the Indebtedness and any other charges under the Amended and Restated Note would be secured by the assets of Purcell, subject to any permitted encumbrances set out therein;
- (f) on the occurrence of a Liquidity Event (as defined at paragraph 2.2 of the Amended and Restated Note), Purcell would, concurrently therewith, pay to Highlands an amount equal to two times the outstanding Indebtedness; and
- (g) when executed, the Amended and Restated Note would amend and restate the Original Note.

The MacMillan Affidavit, at paragraph 5

25. While the priority of the Loan has been challenged, and is the subject of an appeal for which a decision of the British Columbia Court of Appeal is on reserve, the debt remains outstanding. Accordingly, both quantum and priority remain live issues that materially affect any certainty regarding the priority of the debts of Purcell.

(c) Unresolved Issues

26. In addition to the issue of quantum and priority between the LLC Application Respondent and Purcell and CuVeras, the LLC Application Respondent is also a major creditor of CuVeras, having put in substantial funds when it was formed.

The MacMillan Affidavit, at paragraph 8-11

27. In addition, the LLC Application Respondent previously acted as CuVeras' 'manager', giving it authority to manage the business of CuVeras in accordance with Delaware law, and the LLC Application Respondent takes the position that it has not been properly replaced. The LLC Application Respondents therefore dispute that CuVeras is operating with proper authority.

The MacMillan Affidavit, at paragraphs 8-11

28. As further set out in the MacMillan Affidavit, there are a number of complex and outstanding issues as between the parties to this proceeding. There is extant litigation in both British Columbia and Delaware as to the various interested parties' rights, authority and priority vis as vis the Petitioners.

Petition, paragraphs 22-31

The MacMillan Affidavit, paragraphs 8-10

Affidavit #1 of Susan Danielisz, sworn July 12, 2018, paragraphs 2-3

29. The LLC Application Respondent submits that a sales process that permits any party other than the interim finance lender to 'credit bid' its debt will be detrimental to Purcell, its creditors, and CuVeras, as:
- (a) the purported representatives of CuVeras have indicated that it is unlikely anyone will out-bid CuVeras. Therefore the spectre of a credit bid will clearly have a chilling effect on the sales process, and makes it unlikely that any third-party will expend time and resources to conduct due diligence and participate; and
 - (b) the priority of the debts ahead of and *pari passu* with CuVeras are in dispute. which will insert uncertainty in the process.

The MacMillan Affidavit, at paragraph 12

Affidavit #1 of Cory Hunt, sworn July 11, 2018, at paras 30-33

PART 5: LEGAL BASIS

30. As noted by the SCC in *Century Services*,

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.

Century Services Inc v Canada (Attorney General), 2010 SCC 60, at paragraph 70

31. This Honourable Court held in *Walter Energy Canada Holdings, Inc.*, the approval of a sales-process is “a common feature in CCAA proceedings”, and consideration is to be given to the following factors:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

Walter Energy Canada Holdings, Inc (Re), 2016 BCSC 107, at paras 20-21

32. As noted by this Honourable Court in *Veris Gold Corp (Re)*, the following factors are to be considered when approval of a bid (including a credit bid) is sought pursuant to section 36 of the CCAA:

- (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been any unfairness in the sales process.

Veris Gold Corp (Re), 2015 BCSC 1204, at paras 23 and 67

33. In other words, now is the time in the process to look at the fairness and purpose of the sales process and most importantly, whether the sales process will generate the best possible price.

34. In seeking approval of the ability to credit bid, the Petitioners have improperly sought the assistance of this court to control wide-ranging litigation, and are clearly not trying to obtain the best possible price.

35. Moreover, the LLC Application Respondent has *bona fide* reasons to object to proposed credit bidding as:

- (a) the litigation between the LLC Application Respondent and CuVeras remains extant;
- (b) the purported representatives of CuVeras have indicated that, in their own view, it is unlikely anyone will out-bid them; and
- (c) the priority of the debts ahead of, and *pari passu* with, CuVeras’s are in dispute;
- (d) it would be detrimental to all parties, (including the creditors of CuVeras, of which the LLC Application Respondent is a major one) for there to be a stunted sales process that discourages legitimate, third-party bidders, followed by CuVeras taking control of the assets again;
- (e) CuVeras was unable to complete the development of these assets after the first CCAA proceeding, and there is no evidence it will be able to do so now; and

- (f) a credit bid by CuVeras simply means a further cram down of creditors, followed by the same problems that existed prior to these proceedings – no funding available for the development of the Mine.
36. On the other hand, a sales process that generates a cash purchase price would offer the opportunity to:
- (a) realize fair value for the assets, and transfer them to a party capable of developing them; and
 - (b) preserve the Mine's value until the various priority and entitlement disputes can be resolved.

PART 6: MATERIAL TO BE RELIED ON

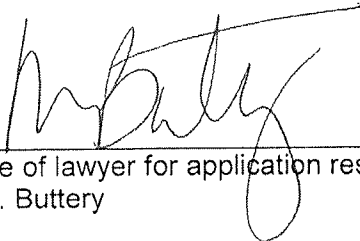
- 1. The Pleadings filed herein to date.
- 2. Affidavit #1 of Brendan MacMillan, sworn July 12, 2018 (and to be filed).
- 3. Affidavit #1 of Susan Danielisz, sworn July 12, 2018 (and to be filed).
- 4. Such further and other materials as counsel may advise and this Honourable Court may permit.

The application respondent estimates that the application will take 1.5 hours.

The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

c/o Mary I.A. Buttery
Cassels Brock & Blackwell LLP
Lawyers
2200 - 885 West Georgia Street
Vancouver BC V6E 3C8

Date: July 12, 2018



Signature of lawyer for application respondent
Mary I.A. Buttery

THIS APPLICATION RESPONSE was prepared by Mary I.A. Buttery, of the firm of Cassels Brock & Blackwell LLP, Lawyers, whose place of business and address for delivery is 2200 885 West Georgia Street, Vancouver, BC, V6E 3C8, Telephone: 604.691.6100; Fax: 604.691.6120.