IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Purcell Basin Minerals Inc. (Re),*
2018 BCSC 949

Date: 20180529
Docket: S186120
Registry: Vancouver

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

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Judgment

Counsel for the Petitioners:	C.D. Brousson
Counsel for the secured creditor of the Petitioners, Highland Pacific Partners LLP:	D. Toigo
Counsel for the proposed monitor, MMP:	B. McRadu
Place and Date of Hearing:	Vancouver, B.C. May 29, 2018
Place and Date of Judgment:	Vancouver, B.C. May 29, 2018

[1] **THE COURT:** The petitioners seek what is referred to as an "initial order" pursuant to s. 11.02(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ["*CCAA*"].

[2] The petitioners and various of their respective principals and related entities have been engaged for many years in court proceedings over the fate and fortunes of a mining property called the Gallowai Bul River Mine (the "mine"), which is located in southeast British Columbia.

[3] The petitioners' major assets include:

a) the mine property, which has an assessed value of approximately $4 million;

b) certain mining claims;

c) certain mineral leases;

d) certain equipment located at the mine;

e) a camp, which has an assessed value of $644,400;

f) inventory of refined concentrate with an estimated value of $100,000; and

g) inventory of extracted ore with an estimated value of $9 million.

[4] A December 2017 valuation valued the mine and its assets at $37.1 million using an adjusted net present value and $53 million using replacement value.

[5] The petitioners also hold the following the intangible or contingent assets

a) mining exploration tax credits estimated at $800,000;

b) GST refunds estimated at $100,000;

c) a reclamation bond pledged to the BC Ministry of Finance in the current amount of $500,027.33; and

d) tax losses attributable to various of the petitioners.

[6] The protracted history of the mine's woes has recently been set out in detail in previous reasons for judgment pronounced by this court, including:

a) *Re Bul River Mineral Corporation*, 2014 BCSC 1732, Justice Fitzpatrick;

b) *Re Bul River Mineral Corporation*, 2015 BCSC 113, Justice Fitzpatrick;

c) *Radford v. MacMillan*, 2017 BCSC 1168, Justice Masuhara;

d) *Re Bul River Mineral Corporation*, 2018 BCSC 39, Justice Fitzpatrick; and

e) *Re Bul River Mineral Corporation*, 2018 BCSC 326, Justice Fitzpatrick.

[7] I will not repeat the history that is set out in those various reasons for judgment here. I will only note that there is obviously a great deal of manoeuvring and strategizing on the part of the various major stakeholders and principals that is going on behind the scenes. The court has not been made privy to those stratagems.

[8] I observe, however, that the battle for management control of the petitioners continues. Mr. MacMillan's appeal of the decision of Masuhara J. which led to Mr. Radford assuming the role of president of the petitioner, Purcell Basin Minerals Inc. ("Purcell") was heard in April 2018 and the judgment is currently under reserve.

[9] On May 15, 2018, counsel for one of the creditors of Purcell, Highland Pacific Partners LLP ("HPP") issued notice to Purcell under its security requiring that it cure of certain alleged breaches within 30 days, failing which HPP would enforce its security.

[10] The evidence before me is overwhelming that the petitioners are insolvent. They have secured and unsecured creditors well in excess of $5 million. The vast majority of the indebtedness is in the form of secured notes to an entity called CuVeras LLC and HPP, which granted as part of the original restructuring of the

mine pursuant to a plan put in place during the original *CCAA* proceedings dealt with by Fitzpatrick J. in 2014.

[11] For the past approximately six months, funding for the mine's ongoing financial obligations has been provided entirely by a company called 1974315 Alberta Ltd. ("1974315") primarily from loans provided to it by Radford and a man named Peter Lacey.

[12] Radford is the current president of Purcell which, in turn, owns all of the other petitioners. Both Radford and Lacey are shareholders of Purcell. 1974315 has also provided retainers in respect of these proposed *CCAA* proceedings to the petitioners' counsel in the amount of $50,000 and to the proposed monitor in the amount of $30,000.

[13] There is no evidence that, without ongoing funding from 1974315, the petitioners will have any money to fund the mine's ongoing obligations, which include the wages of the mine manager and one other employee; ongoing care and maintenance of the idle equipment and other assets, which include environmental and underground infrastructure protection. The mine's fate will be sealed.

[14] The purpose of the *CCAA* is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors so as to enable the company to continue to exist: *Hongkong Bank of Canada v. Chef Ready Foods Ltd.*, [1990] 4 C.B.R. (3d) 311 (B.C.C.A.) at 315 to 316; *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327 at paras. 27 to 29 inclusive.

[15] Counsel for the petitioners submits that, in order for there to be any possibility of preserving or recovering value for the various stakeholders involved, there must be a stay and supervisory process put in place to enable the potential compromise between the petitioners and their creditors. He submits there is no alternative.

[16] The evidence before me is that 1974315 is prepared to fund the petitioners' immediate expenses as set out in the petitioners' short-term cash flow spreadsheet

until such time as a larger interim financing can be provided under a *CCAA* regime, which may include a DIP ("debtor in possession") financing facility. That short-term financing totals $300,000, of which, as I have said, $80,000 is in the form of retainers already paid.

[17] 1974315 is prepared to provide this funding on an unsecured basis, without interest, on the condition that it reserves the right to potentially seek priority of this funding as a priority interim financing and that it is not prepared to provide funding beyond June 25, 2018.

[18] HPP opposes the petitioners' application. HPP's counsel submits that the petitioners have been "limping along for months" with the funding from 1974315 and that the petitioners have failed to demonstrate any urgency in respect of this application. She submits that there is no evidence that the funding that has been provided by 1974315 will not continue. She further submits that the petitioners are not facing any imminent threats to the mine's assets, and that 1974315 appears ready, willing, and able to continue to provide any needed funding. She argues that the evidence falls short of establishing that the petitioners are acting in good faith and with due diligence, which is the lens through which the court must consider whether an initial order under the *CCAA* is appropriate: *Affinity Credit Union 2013 v. Vortex Drilling Ltd.*, 2017 SKQB 228 at para. 17.

[19] Counsel for the petitioners responds that for the initial *CCAA* order that is being sought, they need only satisfy the court that, in the circumstances, the order is appropriate: *CCAA*, s. 11.02(3). He points out, correctly in my view, that the requirement to demonstrate good faith and due diligence does not arise under the *CCAA* until the "comeback" hearing contemplated by s. 11.02(2) of the *CCAA* takes place. Counsel emphasized the urgency of ongoing funding, failing which the mine's assets will likely be put in jeopardy.

[20] Having reviewed the materials before me and considered the submissions of counsel, I am satisfied that the circumstances do exist that make an initial order

under s. 11.02(1) of the *CCAA* appropriate and necessary in order to preserve the petitioners' assets. In particular, I am satisfied that:

a) the continued care and maintenance of the mine is critical to the preservation of its assets, which requires the continued employment of the two employees of the mine, including its mine manager who is required to be employed by the provincial regulation.

b) that there is no evidence this care and maintenance will be funded except by 1974315, and that that funding will only be forthcoming if the initial order being sought is granted.

c) that granting the initial order is in the best interests of all stakeholders, including the petitioners' creditors.

d) that the initial order will put in place an orderly and efficient claims process to determine the value of the claims against the petitioners.

[21] I am prepared to accede to the proposal of the petitioners that MMP be appointed monitor in these proceedings, and that an administration charge of up to a maximum of $300,000 in respect of the reasonable fees and disbursements of the monitor's counsel and the petitioners' counsel be given a first priority charge on the assets, property and undertaking of each of the petitioners in priority to all other claims.

[22] I note that counsel for the petitioners has conceded that there is insufficient evidence to support an additional charge priority in respect of the potential exposure of the petitioners' directors and, accordingly, no such order will be made.

[23] The order will go in the form proposed, except to the extent that the comeback hearing contemplated by s. 11.02(2) of the *CCAA* will be scheduled for the week of June 25, 2018. Now, I say "the week of" because having checked with Supreme Court trial scheduling, I am previously committed to a class action matter on the 25 that has been scheduled for quite some time. At the moment it is only

scheduled for half a day on June 25, but having just three days on that class action matter a couple of weeks ago, that half day may be less or it may be more. I do not know what the reaction will be, but it will have to be some time that week.

[24] I think what we should do is to set it for the 25th. It may be the 26th.

[25] MR. BROUSSON: Sometimes, My Lord, what might be done in the past is if we set it for the 25th, leave the order as is, and if turns out Your Lordship is not available, maybe we can resolve something and maybe it's very short, but if it's not and it's going to be protracted, then we can deal with –

[26] THE COURT: If it is short, it can be set at 9 a.m.

[27] MR. BROUSSON: Right. And maybe if, okay, it looks like it's going to be something longer, maybe it needs to be set later in the week. We could come in maybe just for a brief moment just to extend the stay only for three days or something to that effect. By consent, that would often happen. You say, okay, on 25th, we're going to be here on the 30th now. Can we just have a little bit of time? Usually that will be done by consent.

[28] THE COURT: We will leave it at the 25th, and it may be subject to change. The 25th at 10 a.m. Or should it be 9 a.m.?

[29] MR. BROUSSON: 10 a.m. is fine.

[30] THE COURT: We could set if for 9 a.m. and then if necessary – my concern about setting it at 10 a.m. is I already have something set at 10 a.m.

[31] MR. BROUSSON: Actually 9 a.m. would be better, My Lord, because either way, if it's a consent matter, we can come in and we can do it. If it's a quick consent to move it for three days, we can do that, and if it isn't, we can deal with it in some fashion. So 9 a.m. would actually be preferable.

[32] THE COURT: Let us do 9:a.m. on the 25th.

[33] MR. BROUSSON: If my friend is okay with that.

[34] MS. TOIGO: That's fine, My Lord, thank you.

[35] THE COURT: I was concerned, Ms. Toigo, about the point you raised with respect to the proposed order, para. 9(e), but in my view, the financing by the numbered company to date can only be said to have been made in the ordinary course of business over the last six months or so within the context of what has been going on. So just so it is clear, I am going to leave that wording as is in the order, but it means that the liabilities incurred in the form of the advances from the numbered company will be on the same terms as what has been taking place in the last six months in respect of the $650,000 approximately, which, as I understand it, has no interest and no repayment terms.

[36] MR. BROUSSON: That's what I have been told. Do you want that in the actual order? I am going to have to change the order to strike the directors' charge, and I can probably submit that tomorrow.

[37] THE COURT: Why do you not put some language in to that effect?

[38] MR. BROUSSON: Work with my friend and try to find some language that that's permitted as long as it's an unsecured basis with no interest being charged or something.

[39] THE COURT: Unsecured, no interest.

[40] MS. TOIGO: I think that that's a good idea to build those terms into the order, given the background and the history.

[41] THE COURT: Is there anything further?

[42] MS. TOIGO: No, My Lord.

[43] THE COURT: Thank you very much.

"G.C. Weatherill J."