

No. S-234515
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada Inc. in its capacity as the Receiver of Eagle Graphite Corporation, and not in its personal capacity

To: The Petitioner and the Respondent

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on March 25, 2024 at 9:45 a.m. for the order set out in Part 1 below.

The applicant estimates that the application will take one hour.

This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDER(S) SOUGHT

1. A sale approval and vesting order seeking the following:
 - (a) approving the Purchase and Sale Agreement, dated March 4, 2025 (the "**Weaver APS**") made between the Receiver, as vendor, and Weaver Capital Corp. ("**Weaver**"), as purchaser of all of the right, title and interest of Eagle Graphite Corporation as defined in the Purchase Agreement; and

- (b) vesting all of Eagle's right, title and interest in and to the Purchased Assets (as defined in the Weaver APS) in Weaver.
2. Such other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Background

1. Eagle Graphite Corporation ("**Eagle**") is a mining company that is federally incorporated, with a registered office at 6420 Eagles Drive, Courtenay, British Columbia.
2. Eagle holds certain contracts, rights, permits, licences, mineral claims and mining leases in relation to a graphite production and processing facility known as the "Black Crystal" property, located in the Slocan Valley Area of British Columbia, approximately 35 kilometers west of the city of Nelson and 35 kilometers north of the city of Castlegar (the "**Property**"). The Property includes an open-pit quarry allowing access to the graphite deposits (the "**Quarry**"), a processing facility and equipment (the "**Plant and Equipment**") and two mining or mineral leases registered in the name of Eagle under title numbers 390937 and 392322 (the "**Mineral Leases**") and two mineral claims under title numbers 318625 and 318627 (the "**Mineral Claims**").
3. No graphite has been mined from the Quarry since approximately 2013.

The Security

4. Weaver is a company incorporated under the laws of Ontario, having its address for service in these proceedings only at c/o Clark Wilson LLP, 900 - 885 West Georgia Street, Vancouver, British Columbia.
5. Eagle's indebtedness, and the security securing that indebtedness, was assigned and transferred to Weaver. The original debt of Eagle arose pursuant to an Annual Supply Contract between Eagle and ANH Refractories Company, for itself and as agent for its affiliates, Harbison-Walker Refractories Company, North American Refractories Company, ANH Canada Incorporated, and A.P. Green Industries Inc. (collectively, the "**Original Secured Parties**") dated September 3, 2010 and amended August 30, 2012, January 1, 2014, and May 30, 2014 (collectively, the "**Supply Agreement**").

6. As security for its indebtedness under the Supply Agreement, Eagle granted various security in favour of the Original Secured Parties, including a general security agreement between Eagle and the Original Secured Parties dated March 5, 2013 (the "**GSA**") and an assignment of Contracts, Rights, Permits and Licences from Eagle to the Original Secured Parties dated January 1, 2014 (the "**Mining Assignment**", and collectively with the GSA, the "**Security**").
7. Under the Mining Assignment, Eagle agreed to assign and transfer to the Original Secured Parties Eagle's interest in all contracts, rights, permits and licences held by Eagle including those described or listed in Schedule "A" of the Mining Assignment to Weaver.
8. On July 20, 2023, an order was made by the Supreme Court of British Columbia in these proceedings (the "**Receivership Order**") appointing FTI Consulting Canada Inc. as the receiver of all the assets, undertakings and property of Eagle (the "**Receiver**").
9. On August 16, 2023, an order was made by the Supreme Court of British Columbia in these proceedings (the "**SISP Order**"), approving the sale process (the "**Sale Process**") and the Stalking Horse Offer from Weaver for \$3.7 million.

Summary of Results of Sale Process

10. The Receiver conducted the Sales Process as set out in the SISP Order from August 17, 2023 to September 25, 2023.
11. Potential purchasers had until September 25, 2023 to submit a qualified bid.
12. On September 25, 2023, the Receiver received an offer to purchase Eagle's assets (the "**142 Purchase Offer**") from 1420027 B.C. Ltd. ("**142**"), which included, *inter alia*, the following material terms:
 - (a) a purchase price of \$3.8 million cash; and
 - (b) a non-refundable cash deposit of \$570,000.
13. In accordance with the SISP Order, the Receiver contacted Weaver to discuss whether Weaver would be interested in participating in an auction. Weaver declined to participate in an auction.

14. The Receiver accepted the 142 Purchase Offer as the Successful Bidder. The closing of the transaction was to occur within five business days of the Receiver obtaining an approval and vesting order (the "**142 AVO**").
15. Prior to seeking the 142 AVO, the Receiver was approached by 142 requesting an extension of the closing date as 142 required more time to arrange the funding required to close the transaction.
16. After consulting with Weaver, the Receiver agreed to modify the terms of the 142 APS and negotiated a modification agreement of purchase and sale (the "**Modification Agreement**") with 142, which had, *inter alia*, the following material terms:
 - (a) the purchase price increased to \$4.2 million cash; and
 - (b) the non-refundable cash deposit increased to \$630,000, requiring an incremental deposit of \$60,000 (the "**Incremental Deposit**");
 - (c) the Receiver was permitted to immediately access the deposit for use by the Receiver;
 - (d) 142 paid a \$70,000 modification fee (the "**Modification Fee**") to be distributed to Weaver in acknowledgement of the additional interest charges that Weaver would incur as a result of the Modification Agreement; and
 - (e) the closing date of the transaction was extended to January 31, 2024 (the "**142 Closing Date**").
17. On November 30, 2023, the 142 AVO was granted by the Supreme Court of British Columbia in these proceedings.

Failure of 142 to Close

18. Following the approval of the 142 AVO, 142 paid the Incremental Deposit and the Modification Fee to the Receiver.
19. On January 26, 2024, counsel for 142 forwarded a letter to the Receiver advising that for various reasons, including 142's inability to secure financing, 142 would not be closing on

the 142 Purchase Offer, and proposed an alternative transaction (the "**142 Alternative Transaction Proposal**") which involved:

- (a) a small amount of cash to be paid on closing;
 - (b) the rollover by Weaver of some of its debt; and
 - (c) the majority of the purchase price to be repaid by 142 to Weaver from a net smelter revenue royalty, accessible once the Quarry achieved reasonable commercial production.
20. The Receiver discussed the 142 Alternative Transaction Proposal with Weaver, who subsequently advised the Receiver that they would not agree with the 142 Alternative Transaction Proposal.
21. Accordingly, the Receiver's counsel advised 142's counsel that it rejected the 142 Alternative Transaction Proposal, without a counter offer.
22. 142 subsequently failed to close the 142 Purchase Offer by the 142 Closing Date as ordered under the 142 AVO.
23. Given 142's default of the terms of the 142 Purchase Offer, the Receiver invited Weaver to submit a final binding agreement of purchase and sale pursuant to section 19 of the Sale Process.

Weaver's Final Binding Bid

24. On March 4, 2024, Weaver submitted a Final Binding Bid (the "**Weaver APS**") to the Receiver, with the following material terms:
- (a) **Purchased Assets** (as defined in the Weaver APS):
 - (i) all of Eagle's right, title and interest to the Property, which includes, *inter alia*:
 - A. the Property;
 - B. the Quarry;

- C. the Plant and Equipment;
 - D. the Mineral Leases;
 - E. the Mineral Claims; and
 - F. any and all inventory, chattels, fixtures, equipment, intellectual property and Assigned Contracts (as defined in the Purchase Offer).
- (b) **Purchase Price:** \$3.7 million satisfied by a credit bid against the indebtedness of Eagle;
- (c) **Excluded Assets:**
- (i) cash on hand of Eagle prior to the Closing Date;
 - (ii) personal items;
 - (iii) accounts receivable of Eagle in respect of the business existing at the Closing Date and attributable to any period of time prior to the Closing Date; and
 - (iv) all insurance policies of Eagle or the Receiver in respect of the Purchased Assets.
- (d) **Closing Date:** 5 business days after the vesting order is granted by this Court; and
- (e) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction (i.e., on an “as-is, where-is” basis, without any representations, warranties or covenants by the Receiver in respect of the purchased assets).
25. Although the Sales Process required all bids to have a deposit, the Receiver did not require a deposit from Weaver as part of the Weaver APS due to the Receiver’s available cash on hand, the relatively short time until the closing of the purchase, and Weaver’s commitment to provide any required funds to settle up final costs if such funds were needed to finalize the receivership proceedings.

26. The Receiver's legal counsel has reviewed Weaver's security and provides an opinion that, subject to the standard and customary qualifications, assumptions and limitations, the security of Weaver over the assets, property and undertakings is valid and enforceable.

Part 3: LEGAL BASIS

1. The Applicant relies on:
 - (a) Rule 8-1, Rule 13-5, Rule 21-7 of the *Supreme Court Civil Rules*;
 - (b) *Law and Equity Act*, R.S.B.C. 1996, C. 253;
 - (c) the Receivership Order pronounced in this proceeding; and
 - (d) such further and other materials as counsel may advise.

2. In deciding to approve a sale by a Receiver, the following factors have been considered helpful by our courts:
 - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the efficiency and integrity of the receiver's sale process by which offers were obtained;
 - (c) whether there has been unfairness in the working out of the process; and
 - (d) the interests of all parties.

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA)
 ("**Soundair**"), at para 16.

3. The primary interest to be considered by the Court is that of the creditors, and to see that the best possible price is obtained, though the interests of all parties, including the debtor and the Receiver's recommended purchaser, must also be considered.

Soundair, at paras. 42-46.

4. In the present case, the SISP Order set out in detail the process for the Receiver to implement in terms of exposing the assets of Eagle to the market in order to determine if a superior offer to the Stalking Horse Bid was available.
5. The Receiver submits that it acted in a reasonable and provident manner in its implementation of the SISP so as to fully expose the assets of Eagle to the market and to prospective purchasers.
6. A superior offer to the Stalking Horse Bid, the 142 Purchase Offer, was received and accepted. However, the 142 Purchase Offer did not close by the ordered 142 Closing Date.
7. In the circumstances, the Receiver seeks Court approval of the Weaver APS for the purchase of Eagle's assets and vesting Eagle's right title and interest in its assets, property and undertakings to Weaver.
8. In these circumstances the Receiver submits that there has been no unfairness in the sales process and the efficacy and integrity of the Court-approved SISP Order has been maintained.

Part 4: MATERIAL TO BE RELIED ON


1. The First Report of the Receiver, dated August 11, 2023;
2. The Second Report of the Receiver, dated November 21, 2023;
3. The Third Report of the Receiver, dated March 5, 2024; and
4. Any such further or other materials as counsel may advise, and the Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and

- (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

March 5, 2024 _____
Dated



Signature of lawyer for filing party
DLA Piper (Canada) LLP (Samantha Arbor)
Lawyer for FTI Consulting Canada Inc.

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate Judge</p>

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

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