

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended)

N°: 500-11-048114-157

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

QUINTO MINING CORPORATION

Debtor/Respondent

-and-

MASON GRAPHITE INC.

Petitioner

-and-

FTI CONSULTING CANADA INC.

Monitor

CONTESTATION BY THE DEBTOR/RESPONDENT QUINTO MINING CORPORATION OF THE PETITIONER'S MOTION TO LIFT THE STAY OF PROCEEDINGS, IN HOMOLOGATION OF A TRANSACTION AND FOR A SETTLEMENT APPROVAL ORDER (Court docket # 391)

TO THE HONOURABLE STEPHEN W. HAMILTON, J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, THE DEBTOR/RESPONDENT QUINTO MINING CORPORATION, IN SUPPORT OF ITS CONTESTATION, SUBMITS AS FOLLOWS:

1. With respect to paragraphs 1 and 2 of the Petitioner Mason Graphite Inc. (the "**Petitioner**")'s *Motion to Lift the Stay of Proceedings, in Homologation of a Transaction and for a Settlement Approval Order* (the "**Motion**"), the Debtor/Respondent Quinto Mining Corporation ("**Quinto**") refers to Exhibit R-1 and denies anything that is not in strict conformity therewith.
2. With respect to paragraph 3 of the Motion, Quinto refers to the Court Record and denies anything that is not in strict conformity therewith.
3. Quinto admits paragraph 4 of the Motion.
4. Quinto has no knowledge of paragraph 5 of the Motion.

5. With respect to paragraph 6 of the Motion, Quinto refers to Exhibit R-2 and denies anything that is not in strict conformity therewith.
6. With respect to paragraph 7 of the Motion, Quinto refers to Exhibit R-3 and denies anything that is not in strict conformity therewith.
7. With respect to paragraph 8 of the Motion, Quinto refers to Exhibit R-4 and denies anything that is not in strict conformity therewith.
8. With respect to paragraph 9 of the Motion, Quinto refers to Exhibit R-5 and denies anything that is not in strict conformity therewith.
9. Quinto denies paragraph 10 of the Motion.
10. With respect to paragraph 11 of the Motion, Quinto refers to Exhibit R-6 and denies anything that is not in strict conformity therewith.
11. Quinto admits paragraph 12 of the Motion and adds that the press release filed as Exhibit R-7 clearly provides that \$6,000,000 has been secured for the payment of the Outstanding Deferred Purchase Price (as defined below).
12. With respect to paragraphs 13 and 14 of the Motion, Quinto refers to Exhibit R-8 and denies anything that is not in strict conformity therewith.
13. With respect to paragraph 15 of the Motion, Quinto refers to Exhibit R-9 and denies anything that is not in strict conformity therewith.
14. With respect to paragraph 16 of the Motion, Quinto refers to Exhibit R-10 and denies anything that is not in strict conformity therewith.
15. With respect to paragraph 17 of the Motion, Quinto refers to Exhibits R-11 and R-12 and denies anything that is not in strict conformity therewith.
16. Quinto has no knowledge of the allegations made at paragraph 18 of the Motion.
17. Quinto denies paragraph 19 of the Motion and adds that the Petitioner misrepresented its financial situation to Quinto, via the Monitor, in order to induce Quinto to enter into the proposed settlement.
18. Quinto denies paragraphs 20, 21 and 22 of the Motion.

AND AS FURTHER CONTESTATION OF THE MOTION, THE QUINTO RESPECTFULLY SUBMITS THE FOLLOWING:

I. THE FACTS:

19. Quinto is party to a Purchase Agreement with the Petitioner, dated April 5, 2012 (the "**Mason Graphite Agreement**"), as appears from a copy of the Mason Graphite Agreement communicated herewith as **Exhibit D-1**.

20. Pursuant to the Mason Graphite Agreement, Quinto agreed to sell certain mining claims (the "**Mining Claims**") to the Petitioner for a total purchase price of USD \$15,000,000 (the "**Purchase Price**").
21. The Mason Graphite Agreement provided that USD \$7,500,000 of the Purchase Price was to be deferred and payable in instalments at future dates (the "**Deferred Purchase Price**").
22. To secure the full and timely payment of the Deferred Purchase Price and the performance of all of the Petitioner's obligations under the Mason Graphite Agreement, Mason Graphite hypothecated and granted a security interest to Quinto in all of its personal property and real property, including, without limitation, the Mining Claims (the "**Security**").
23. A number of instalments of the Deferred Purchase Price came due subsequent to the commencement of these CCAA proceedings, and were paid by the Petitioner.
24. The Mason Graphite Agreement provides for the last two instalments of the Deferred Purchase Price, totalling USD \$5,000,000 (the "**Outstanding Deferred Purchase Price**"), to be paid as follows:
 - a) USD \$2,500,000 payable on October 5, 2016; and
 - b) USD \$2,500,000 payable on April 5, 2017.
25. Pursuant to section 2.7 of the Mason Graphite Agreement, the Petitioner undertook to provide a written notice to Quinto on the status of the preparation and completion of the feasibility study on the last day of each June and December, commencing on December 31, 2012.
26. On December 29, 2015, the Petitioner sent such notice to Quinto, stating:

"Mason Graphite Inc. has not yet started its commercial production. Actually, Mason Graphite does not have the funds to start the commercial production and with the actual difficult financing market, Mason Graphite is not expecting to start the commercial production before 2018."

[emphasis added]

the whole as appears from an email from the Petitioner to Quinto, dated December 29, 2015, communicated herewith as **Exhibit D-2**.
27. In January 2016, the Petitioner made a proposal to Quinto, through the Monitor, for the early repayment of the Outstanding Deferred Purchase Price at a significant discount – for a total of CAD \$366,500 (the "**Initial Offer**"), as appears from an email exchange between the Petitioner and the Monitor, communicated herewith as **Exhibit D-3**.
28. The Initial Offer was made by the Petitioner on the basis that the ability of the Petitioner to obtain financing to pay the Outstanding Deferred Purchase Price was "highly uncertain" and that, in the face of such uncertainty, Quinto should accept early repayment at a significant discount rather than try to enforce its Security:

“The last deferred payment due to Quinto is not funded or covered by any restricted cash and would eventually need to come from a future financing which, in today’s financial markets is highly uncertain in terms of timing and amounts required for our next phases of development.”

This last deferred payment is secured by the 215 mining claims sold by Quinto in 2012. If Mason Graphite does not proceed with the last deferred payment, then Quinto will have to recover part of the amount through the realization of the mining claims which, in today’s market, will prove to be difficult, costly and lengthy in time.”

[emphasis added]

the whole as appears from the Initial Offer, exhibit D-3.

29. This Initial Offer was rejected by the Monitor, on behalf of Quinto.
30. On July 28, 2016, the Petitioner made a revised offer for early repayment of the Outstanding Deferred Purchase Price in the amount of \$3,000,000 (the “**Second Offer**”), as appears from an email from the Petitioner to the Monitor, dated July 28, 2016 communicated herewith as **Exhibit D-4**.
31. At the time of the Second Offer, the Petitioner represented as follows:

“Over the past few months, we’ve been working on securing a financing for an early repayment of the last deferred payment, which is not easy in the actual market, even more since it is aimed at reimbursing a debt.”

Nevertheless, we have found some financial partners and are now in a position to have access to an amount of \$3M to be used as a complete and final payment to fully reimburse the last deferred payment without conditions and payable on closing.”

[emphasis added]

the whole as appears from the Second Offer, Exhibit D-4.

32. On August 16, 2016, (i) the Second Offer was rejected by the Monitor on behalf of Quinto and (ii) the Monitor, on behalf of Quinto, made a counter-proposal to the Petitioner pursuant to which the Petitioner would be released from its obligations to pay the Outstanding Deferred Purchase Price in exchange for payment of USD \$4,000,000 (the “**Conditional Counter-Offer**”), subject to any necessary Court approval and the following conditions:
 - a) acceptance of the Conditional Counter-Offer by no later than 5:00 p.m. Eastern Time on August 22, 2016;

- b) execution of a definitive settlement agreement by no later than September 2, 2016; and
- c) payment of USD \$4,000,000 in full by no later than September 30, 2016, or three business days following Court approval of the Conditional Counter-Offer if Quinto were to determine that such approval is necessary;

the whole as appears from an email from the Monitor to the Petitioner, dated August 16, 2016 communicated herewith as **Exhibit D-5**.

- 33. The Conditional Counter-Offer was made by the Monitor on behalf of Quinto on the basis of the prior representations made by the Petitioner as to the Petitioner's financial situation, such as those made in Exhibits D-2, D3 and D-4.
- 34. On August 22, 2016, the Petitioner accepted the terms of the Conditional Counter-Offer as appears from the email from the Petitioner to the Monitor, dated August 22, communicated herewith as **Exhibit D-6**.
- 35. On August 26, 2016, counsel to Quinto sent a draft settlement agreement to the Petitioner's counsel (the "**First Draft of the Settlement Agreement**"), as appears from the email from counsel to Quinto to counsel to the Petitioner, communicated herewith as **Exhibit D-7**.
- 36. The First Draft of the Settlement Agreement provided that:
 - a) The settlement agreement and early repayment of the Outstanding Deferred Purchase Price was conditional upon, among other things, the Court's issuance of an Order in the CCAA proceedings by no later than October 14, 2016 in form and substance satisfactory to the parties, acting reasonably, approving the settlement (the "**Settlement Approval Order**"); and
 - b) Quinto would, as soon as practicable following execution of the settlement agreement, file a motion seeking the Settlement Approval Order.
- 37. On August 31, 2016, having received no response from the Petitioner's counsel, counsel to Quinto followed up regarding the First Draft of the Settlement Agreement, as appears from the email from counsel to Quinto to counsel to the Petitioner, communicated herewith as **Exhibit D-8**.
- 38. On September 1, 2016, the Petitioner's counsel provided comments to counsel to Quinto on the First Draft of the Settlement Agreement, as appears from the email from counsel to Quinto to counsel to the Petitioner, communicated herewith as **Exhibit D-9**.
- 39. As of September 2, 2016, a definitive settlement agreement had not been executed, despite the fact that execution of a definitive settlement agreement by that date was one of the conditions of the Conditional Counter Offer.
- 40. On September 6, 2016, at 11:46, counsel to Quinto sent a revised draft of the settlement agreement to the Petitioner (the "**Revised Draft of the Settlement Agreement**"), as appears from the email from the Petitioner's counsel to Quinto's counsel, communicated herewith as **Exhibit D-10**.

41. The Revised Draft of the Settlement Agreement also provided for, among other things, a Settlement Approval Order.
42. The Petitioner never accepted the Revised Draft of the Settlement Agreement prior to its Revocation (as defined below), nor was a definitive settlement agreement ever executed.
43. On September 6, 2016, at 11:57, one of the representatives of Quinto received an automated email from the Petitioner containing a press release issued by the Petitioner (the "**September 6 Press Release**"), as appears from the email and press release dated September 6, 2016, communicated herewith as **Exhibit D-11**.
44. The September 6 Press Release announced a \$25,000,000 bought deal private placement offering (the "**Private Placement**"), and stated, *inter alia*, that up to approximately \$6,000,000 of the proceeds of the Private Placement would be allocated towards payment of the Outstanding Deferred Purchase Price, as appears from the September 6 Press Release, Exhibit D-8.
45. Similarly, Schedule "A" to the Private Placement agreement, dated September 6, 2016, indicated that proceeds of the offering will be used, *inter alia*, as follows:

"Up to approximately \$6 million for the payment of amounts owing to Quinto Mining Corporation related to the Company's acquisition of the mining claims that comprise the Lac Guéret property."

the whole as appears from the Schedule "A" to the Private Placement agreement communicated herewith as **Exhibit D-12**.
46. At the moment of the September 6 Press Release, the Revised Draft of the Settlement Agreement was not accepted and as such no definitive settlement agreement was accepted or executed by Quinto.
47. Upon receipt of the September 6 Press Release, it became clear to Quinto that the negotiations between the Monitor, on behalf of Quinto, and the Petitioner were tainted, as the Private Placement and its allocation were never disclosed. In fact, the Petitioner had misrepresented the financing available to it to pay the Outstanding Deferred Purchase Price. Accordingly, even if Quinto had consented to a settlement agreement, which consent is not admitted and is expressly denied, such consent would be vitiated given the tainted negotiations and misrepresentations by the Petitioner.
48. Therefore, on September 6, 2016, at 13:53, based on the material information obtained from the September 6 Press Release, Quinto informed the Petitioner that the Conditional Counter-Offer was revoked, as such the Conditional Counter-Offer was no longer in the best interests of Quinto's stakeholders (the "**Revocation**"), the whole as appears from the email from counsel to Quinto to counsel to the Petitioner, dated September 6, 2016 communicated herewith as **Exhibit D-13**.
49. It goes without saying that if the Private Placement and its allocation would have been disclosed to Quinto, Quinto would not have entertained any settlement discussions whatsoever.

50. It further goes without saying that if the Petitioner is successful on the Motion, it would gain an undue advantage at the expense of Quinto's stakeholders.
51. The disclosure of the Private Placement after the Conditional Counter-Offer came as a total surprise to Quinto in light of the premise upon which the discussions were entertained (Exhibits D-2, D-3, D-4).
52. On September 14, 2016, Quinto received a demand letter from the Petitioner's Counsel, demanding that Quinto execute the Revised Draft of the Settlement Agreement on the terms of the Conditional Counter-Offer (the "**Proposed Settlement**") and present a motion for Court approval thereof.
53. On September 27, 2016, the Petitioner issued a second press release regarding the Private Placement (the "**September 27 Press Release**"), announcing that \$28,800,000 has been raised, instead of the initially-reported \$25,000,000, and indicating that the proceeds of the offering will be used, *inter alia*, as follows:

"... for the payment of amounts owing to Quinto Mining Corporation related to the Company's acquisition of the mining claims that comprise the Lac Guéret property ..."

the whole as appears from the September 27 Press Release communicated herewith as **Exhibit D-14**.

54. Furthermore, the Private Placement Term Sheet indicates, *inter alia*, as follows:

"Up to approximately \$6 million [of the gross proceeds will be used] for the repayment of amounts owing to Quinto Mining Corporation related to the Company's acquisition of the mining claims that comprise the lac Guéret property ..."

the whole as appears from the Private Placement Term Sheet communicated herewith as **Exhibit D-15**.

55. On October 20, 2016, the Petitioner issued financial statements for the years ended June 30, 2016 and 2015, in which the Outstanding Deferred Purchase Price is recorded in accordance with the Mason Graphite Agreement, and which indicate that management believes the Petitioner to be in a position to meet its liabilities as they become due, because of the Private Placement, the whole as appears from the financial statements of the Petitioner communicated herewith as **Exhibit D-16**.
56. In light of the foregoing, the Petitioner was not being forthright when negotiating the settlement and misrepresented its financial situation to gain an advantage to convince Quinto to settle for less, under the guise that the Petitioner would otherwise not be able to keep the mining rights which would force Quinto to attempt to monetize them in the current difficult market.

II. THE PETITIONER DID NOT ACT WITH GOOD FAITH

57. In making misrepresentations that it had insufficient funds to pay the entire Outstanding Deferred Purchase Price and that it was uncertain that it could obtain financing to do so,

the Petitioner induced Quinto and the Monitor into error for the purpose of misleading them to accept a discount on the Outstanding Deferred Purchase Price, while there was no legitimate reason to do so.

58. The Petitioner has therefore breached its duty of good faith during negotiations, causing a defect in any consent provided by Quinto, which is not admitted and is strictly denied, due to the misrepresentations and omissions made by the Petitioner to the Monitor, acting on behalf of Quinto.
59. Therefore, even if consent was provided by Quinto, which is not admitted and is strictly denied, the foregoing bars the Petitioner from the required standing to seek to lift of the stay of proceedings, which therefore cannot be granted by the Court.
60. Furthermore, Quinto's defect of any consent, resulting from the misrepresentations and omissions made by the Petitioner during negotiations with the Monitor, acting on behalf of Quinto, means that no binding contract or promise to contract could have ever existed between the parties.

III. THE CONDITIONS OF THE CONDITIONAL COUNTER-OFFER WERE NEVER SATISFIED AND THE CONDITIONAL COUNTER-OFFER WAS REVOKED BY QUINTO

61. As noted above, the Conditional Counter-Offer was conditional upon (i) the execution of a definitive settlement agreement by no later than September 2, 2016, and (ii) Court approval by way of the Settlement Approval Order, as appears from the Conditional Counter-Offer, Exhibit D-5.
62. No definitive settlement agreement was ever executed before that date, and the Counter-Offer was duly and legally revoked by Quinto on September 6, 2016, as appears from the Revocation email dated September 6, 2016, Exhibit D-10, without any settlement agreement ever having been executed or accepted before such Revocation.
63. This Court has also not granted the Settlement Approval Order which was a condition of the Conditional Counter-Offer.
64. Therefore, no binding contract or promise to contract exists between Quinto and the Petitioner.

IV. THE PROPOSED SETTLEMENT CANNOT BE APPROVED

65. Notwithstanding the foregoing, should the Court find that a valid and binding settlement was entered into between the parties, which is not admitted and is expressly denied, Quinto submits that the Proposed Settlement should not be approved by this Court.
66. The Petitioner should not benefit from its misrepresentations and omission to disclose pertinent information from Quinto and the Monitor during negotiations.
67. Notwithstanding its own misrepresentations and bad faith, the Petitioner petitions the Court to approve a settlement that:

- a) would result in Quinto's creditors generally being deprived of USD \$1,000,000, with the Petitioner obtaining a correlative unjust enrichment at the expense thereof;
 - b) was never signed by Quinto nor the Petitioner;
 - c) was never accepted by the Petitioner before the Revocation;
 - d) was obtained on the basis of misrepresentations and omissions of the Petitioner;
 - e) has not had its conditions satisfied; and
 - f) is not supported by the Monitor.
68. In addition, the Petitioner clearly has, and has had at all relevant times, the capacity to pay the Outstanding Deferred Purchase Price pursuant to the Mason Graphite Agreement, as appears from its financial statements, Exhibit D-16, from the September 6 Press Release, Exhibit D-11, and from the September 27 Press Release, Exhibit D-14.
69. Therefore, the Proposed Settlement:
- a) is not fair and reasonable;
 - b) will not be beneficial to Quinto and its stakeholders generally; and
 - c) is inconsistent with the purpose and spirit of the CCAA.
70. In light of the foregoing, Quinto respectfully submits that the Court should refuse to approve the Proposed Settlement.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Contestation;
DISMISS the Motion;
THE WHOLE with costs.

Montréal, November 25, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Debtor/Respondent
Quinto Mining Corporation

N° : 500-11-048114-157

**SUPERIOR COURT
DISTRICT DE MONTREAL**
(Commercial Division)

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ORDER AND
EXHIBITS D-1 to D-16
(Linked to Court docket #391)**

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