

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., c. C-36, as amended)

N°: 500-11-048114-157

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

BMO TRUST COMPANY, a duly incorporated company
having a place of business at 1250, René-Lévesque Blvd.
West, suite 4600, Montréal, Québec, H3B 5J5

-and-

BEUMER KANSAS CITY, LLC, a duly incorporated company, having a place of business at 4435, Main Street, Suite 1600, Kansas City, Missouri, USA, 64111

-and-

BEUMER CORPORATION, a duly incorporated company, having a place of business at 4435, Main Street, Suite 1600, Kansas City, Missouri, USA, 64111

Respondents

RE-AMENDED MOTION TO OBTAIN THE RELEASE OF ESCROWED FUNDS
(Section 11 of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C. OR TO ONE OF THE OTHER HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE BLOOM LAKE CCAA PARTIES (AS DEFINED HEREIN) SUBMIT:

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (as subsequently amended, rectified and/or restated, the "**Bloom Lake Initial Order**")¹ commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC, and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"), as appears from the Initial Order dated January 27, 2015, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-1**.
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the "**Monitor**") (para. 39 of the Bloom Lake Initial Order) and a stay of proceedings was ordered in respect of the Bloom Lake CCAA Parties until February 26, 2015 (the "**Stay Period**") (para. 8 *ff.* of the Bloom Lake Initial Order).

¹ On May 20, 2015, Mr. Justice Hamilton, issued an Initial Order (as subsequently amended, rectified and/or restated the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines, an unincorporated contractual joint venture, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"; collectively with the Bloom Lake CCAA Parties, the "**CCAA Parties**"), as appears from the Court record. The Wabush CCAA Parties and the terms of the Wabush Initial Order are not at issue herein.

3. The Stay Period was subsequently extended to April 30, 2015 and then to July 31, 2015, as appears from the (amended) Bloom Lake Initial Order dated February 20, 2015 and from the Order dated April 17, 2015, both of which form part of the Court record and are communicated herewith for convenience respectively as **Exhibit R-2** and **Exhibit R-3**.
4. On July 30, 2015, Mr. Justice Hamilton, issued an order extending the Stay Period to November 6, 2015, as appears from the Order dated July 30, 2015, which forms part of the Court record and is communicated herewith for convenience as **Exhibit R-4**.
5. Section 10 of the Bloom Lake Initial Order (Exhibit R-2) reads as follows:

10. ORDERS that the CCAA Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 33 hereof.

2. **BEUMER LITIGATION AND THE ESCROW AGREEMENT**

6. On July 12, 2013, Beumer Corporation ("**Beumer**") commenced U.S. Federal Court proceedings in Ohio against Bloom Lake LP with respect to outstanding payments for Beumer's design and construction of various conveyor assets as well as an ore storage structure at the mine located approximately 13 km north of Fermont, Québec in the Labrador Trough known as the Bloom Lake Mine, which is operated by the Bloom Lake CCAA Parties (the "**Beumer Claim**"). The Beumer Claim was subsequently amended on October 1st, 2013, the whole as appears from the First Amended Complaint communicated herewith as **Exhibit R-5**.
7. Prior to the institution of the Beumer Claim, Bloom Lake LP had deposited the final payment of USD \$6,330,854 (the "**Escrowed Funds**") with respect to Beumer's work into escrow with the Respondent BMO Trust Company ("**BMO**") in Montréal, Québec pending final resolution of the Beumer Claim, the whole pursuant to the terms of an Escrow Agreement between Bloom Lake LP, Beumer and BMO dated June 28, 2013 (the "**Escrow Agreement**"), communicated herewith as **Exhibit R-6**. Section 12.1(b) of said agreement provides that all notices to Beumer Corporation have to be given to Beumer Kansas City, LLC.
8. Beumer originally claimed damages of \$7,362,438 and subsequently commenced an arbitration claim against Bloom Lake LP for the amount of the Escrowed Funds.
9. On September 10, 2013, Bloom Lake LP commenced a motion to dismiss Beumer's claim. That motion was denied as the Court held that it was moot in light of Beumer filing the First Amended Complaint.
10. Bloom Lake LP filed another motion to dismiss the Beumer Claim on October 15, 2013, which was denied on December 1, 2014.
11. On June 12, 2014, the U.S. Federal Court denied a motion by Beumer to refer the dispute to arbitration, as appears from the order communicated herewith as **Exhibit R-7**.

12. On October 31, 2014, in light of the foregoing motion to dismiss by Bloom Lake LP having been pending for so long without a ruling, Bloom Lake LP commenced separate proceedings against Beumer before the U.S. Federal Court by filing a statement of claim for \$12,354,929.50 alleging Beumer's performance failures on the project (the "**2014 Lawsuit**"), a copy of which is communicated herewith as **Exhibit R-8**.
13. On December 15, 2014, Bloom Lake LP filed an answer to the Beumer Claim and also a counterclaim which asserted the same affirmative claims against Beumer as those contained in the 2014 Lawsuit (the "**Answer and Counterclaim**"), a copy of which is communicated herewith as **Exhibit R-9**.
14. As of December 31, 2014, an amount of USD \$6,317,305.52 was held in the account that has been opened to deposit the Escrowed Funds, as appears from the statement of account for BMO account number 865-22655 communicated herewith as **Exhibit R-10**.
15. On January 5, 2015, Beumer filed a filed an answer to Bloom Lake LP's counterclaim seeking the dismissal thereof, the whole as appears from a copy of the Answer of Plaintiff Beumer to Counterclaim, communicated herewith as **Exhibit R-11**.
16. On August 20, 2015, the 2014 Lawsuit was dismissed, as appears from the order communicated herewith as **Exhibit R-12**, however Bloom Lake LP's affirmative claims still remain pending by way of the Answer and Counterclaim.
17. The proceedings in the Beumer Claim have made very little progress, as the parties have only exchanged initial disclosures but have not otherwise conducted discovery. Furthermore, the proceedings have been stayed until November 8, 2015 in light of the Stay Period in the CCAA Proceedings. No other dates or deadlines are currently in place, except for a status call scheduled with the Federal Court in Ohio on November 17, 2015.

3. GROUNDS FOR THE PRESENT MOTION

18. By way of the present Motion, the Bloom Lake CCAA Parties are seeking the release of the Escrowed Funds in favour of Bloom Lake LP, as had been announced at paragraph 184 of the Motion for the Issuance of an Initial Order.
19. Section 4.1 of the Escrow Agreement provides that BMO will only release the Escrowed Funds upon receipt of (i) a written agreement between Bloom Lake LP and Beumer, (ii) a final non-appealable Court order directing the delivery of the Escrowed Funds, or (iii) a final non-appealable arbitration decision directing the delivery of the Escrowed Funds.
20. Section 4.2 of the Escrow Agreement provides that BMO is acting solely as depositary of Bloom Lake LP and Beumer.
21. It is clear that the Escrowed Funds are in sequestration with BMO, pursuant to articles 2305 to 2311 of the *Civil Code of Québec*, and that they are not being held in trust by BMO.
22. As appears from the discussion in the previous section hereof, the Beumer Claim is a claim by Beumer for contractual damages.

23. Therefore, Beumer is an ordinary unsecured creditor of Bloom Lake LP with an unliquidated contingent claim which is subject to the stay of proceedings.
24. Bloom Lake LP, on the other hand, is a Bloom Lake CCAA Party pursuant to the Bloom Lake Initial Order and as such, along with the other Bloom Lake CCAA Parties, benefits from the protections and authorizations provided therein (see para. 4 of the Bloom Lake Initial Order), including, *inter alia*:
 - a) the authority to submit to its creditors one or more plans of compromise arrangement (see para. 6 of the Bloom Lake Initial Order);
 - b) the protection afforded by the Stay Period (see para. 8 of the Bloom Lake Initial Order);
 - c) the possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (see para. 10 of the Bloom Lake Initial Order).
25. The Escrowed Funds which are deposited with BMO are an asset of Bloom Lake LP and form part of its patrimony.

4. PROCEDURAL MATTERS

26. The Bloom Lake CCAA Parties submit that the notices given of the presentation of the present Motion are proper and sufficient.
27. Pursuant to paragraph 54 of the Bloom Lake Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
28. The service of the present Motion serves as notice pursuant to paragraphs 47 and 54 of the Bloom Lake Initial Order.
29. Paragraph 55 of the Bloom Lake Initial Order requires that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on October 30, 2015.
30. Paragraph 56 of the Bloom Lake Initial Order further provides that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").

31. Paragraph 57 of the Bloom Lake Initial Order provides that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

5. CONCLUSIONS

32. Therefore, the Escrowed Funds shall be remitted to Bloom Lake LP to be used by it in connection with its restructuring, ultimately to the benefit of its creditors. The Bloom Lake CCAA Parties respectfully submit that doing otherwise would cause the Respondent Beumer to be preferred over Bloom Lake LP's other unsecured creditors.
33. In light of the foregoing, the Bloom Lake CCAA Parties hereby seek an order from the Honourable Court directing BMO to release and remit the Escrowed Funds to Bloom Lake LP, pursuant to section 4.1 of the Escrow Agreement.
34. The Bloom Lake CCAA Parties respectfully submit that it is appropriate and necessary that the relief sought herein be granted for the purposes of maximizing their realization efforts to the benefit of their stakeholders.
35. In light of the requirement in the Escrow Agreement that any Order directing the release of the Escrowed Funds be final and non-appealable, the Bloom Lake CCAA Parties hereby seek provisional execution notwithstanding appeal of the Order to be rendered on the present motion.
36. The Bloom Lake CCAA Parties respectfully submit that this motion should be granted in accordance with its conclusions.
37. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion to Obtain the Release of Escrowed Funds;

ORDER the Respondent BMO Trust Company to release and remit to the Mise-en-cause The Bloom Lake Iron Ore Mine Limited Partnership the Escrowed Funds held on deposit in the BMO Trust Company account number 865-22655 pursuant to the Escrow Agreement dated June 28, 2013 (the "**Escrow Agreement**"), being USD \$6,317,305.52, plus any interest accrued thereon since December 31, 2014, less fees payable to BMO Trust Company pursuant to the Escrow Agreement;

ORDER provisional execution of the Order to be rendered notwithstanding appeal;

THE WHOLE without costs, save in the case of contestation.

Montréal, January 27, 2016



BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Bloom Lake CCAA Parties

AFFIDAVIT

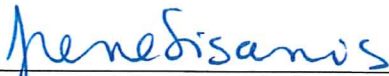
I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of the Petitioners, Bloom Lake General Partner Limited and Cliffs Québec Iron Mining ULC, having a place of business at 755, Route 389, P.O. Box 2029, Fermont, Québec G0G 1J0, solemnly affirm that all the facts alleged in the present Re-Amended Motion to Obtain the Release of Escrowed Funds are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio
this 28th day of January, 2016



Notary Public / Commissioner of Oaths

Irene Sisamis
Notary Public
State of Ohio
My Commission Expires
September 14, 2019



NOTICE OF PRESENTATION

TO: Service List

BMO TRUST COMPANY
c/o Vice-president Trust Services
1250, René-Lévesque Blvd. West,
Suite 4600
Montréal, Québec H3B 5J5

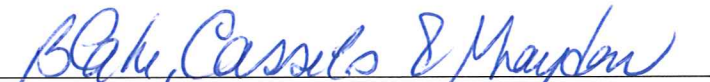
BEUMER KANSAS CITY LLC
c/o F. J. Warmath, President
4435, Main Street, Suite 1600
Kansas City, Missouri
64111
USA

BEUMER CORPORATION
4435, Main Street, Suite 1600
Kansas City, Missouri
64111
USA
c/o: Mtre Brandon Farber (*Fasken Martineau*)

TAKE NOTICE that the present *Re-Amended Motion to Obtain the Release of Escrowed Funds* will be presented for adjudication before Mr. Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Quebec Superior Court, Commercial Division, sitting in and for the district of Montreal, in the Montreal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **April 22, 2016**, at a time and in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, January 27, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Bloom Lake CCAA Parties

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., c. C-36, as amended)

N^o: 500-11-048114-157

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

**BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Monitor

and

**BMO TRUST COMPANY
BEUMER KANSAS CITY, LLC
BEUMER CORPORATION**

Respondents

LIST OF EXHIBITS

(In support of the *Re-Amended Motion to Obtain the Release of Escrowed Funds*)


- R-1 Initial Order dated January 27, 2015;
- R-2 Bloom Lake Initial Order dated February 20, 2015;
- R-3 Order dated April 17, 2015 (Stay Period);
- R-4 Order dated July 30, 2015 (Stay Period);

- R-5 First Amended Complaint dated October 1st, 2013;
- R-6 Escrow Agreement dated June 28, 2013;
- R-7 Federal Court Order dated June 12, 2014;
- R-8 Statement of claim for \$12,354,929.50 dated October 31, 2014;
- R-9 Answer and Counterclaim filed on December 15, 2014;
- R-10 Statement of account as of December 31, 2014;
- R-11 Answer of Plaintiff Beumer to Counterclaim dated January 5, 2015
- R-12 Order dismissing the law suit dated August 20, 2015.

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-s0c6d3c49fa941078>

Montréal, January 27, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Bloom Lake CCAA Parties

N°: 500-11-048114-157

SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)

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

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Debtors / Petitioners

and-

BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & AL.

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

BMO TRUST COMPANY & AL.

Respondents

**RE-AMENDED MOTION TO OBTAIN THE RELEASE OF
ESCROWED FUNDS, AFFIDAVIT AND
NOTICE OF PRESENTATION**

ORIGINAL

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