

**SUPERIOR COURT**  
Commercial Division

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-048114-157

DATE: March 2, 2015

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**PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.**

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER LIMITED  
QUINTO MINING CORPORATION  
8568391 CANADA LIMITED  
CLIFFS QUÉBEC IRON MINING ULC**  
Petitioners

And

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP  
BLOOM LAKE RAILWAY COMPANY LIMITED**  
Mises-en-cause

And

**FTI CONSULTING CANADA INC.**  
Monitor

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TRANSCRIPT OF JUDGMENT RENDERED ORALLY ON FEBRUARY 20, 2015<sup>1</sup>

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[1] In the Initial Order dated January 27, 2015, Mr. Justice Castonguay created a Directors' Charge of \$3.5 million and an Administration Charge of \$2.5 million on all Property of the CCAA Parties, ranking after the Encumbrances.<sup>2</sup>

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<sup>1</sup> As permitted by Articles 471 and 472 C.C.P. (*Kellog's Company of Canada c. P.G. du Québec*, [1978] C.A. 258, 259-260), the Court revised the reasons to improve their presentation and comprehension.

[2] Me Boucher for the CCAA Parties asks me today to amend the Initial Order in the following respects:

1. extend the Stay Period to April 30, 2015;
2. reduce the Directors' Charge to \$2.5 million;
3. give the Directors' Charge and the Administration Charge priority over all of the Encumbrances;
4. provide for subrogation in favour of the holder of any impaired secured creditor.

[3] The request to extend the Stay Period is not contested.

[4] Me Kandestin filed an opposition on behalf of Bank of Nova Scotia. He objects to the requested priority for the Charges and to the amount of the Charges. He agrees with the subrogation, which he had proposed as a subsidiary conclusion.

[5] Various holders of legal hypothecs intervened to support Me Kandestin's position. Counsel for the monitor and counsel for the directors supported the CCAA Parties' position.

[6] All parties agree that the risk that we are dealing with today is small. The CCAA Parties intend to pay in the ordinary course of business the amounts covered by the Directors' Charge (essentially salaries, vacation pay, deductions at source, sales taxes and pension contributions) and the amounts covered by the Administration Charge (fees of the monitor and its counsel, CCAA Parties' counsel and directors' counsel). The cash flows prepared by the CCAA Parties and reviewed by the Monitor provide for these payments and show that after making all of these payments between now and April 30, 2015 the CCAA Parties will still have \$35 million in cash. Further, there are unencumbered assets with a book value somewhere in the range of \$1 billion which are already charged by the Directors' Charge and the Administration Charge.

[7] Me Gagnon suggests that the risk is so small that the debate can be put off to another day. I do not agree. The parties should know the rules of the game at the outset rather than fight about them later when the problem arises. Therefore, although at this stage the risk appears small, it still needs to be allocated.

[8] With respect to the Administration Charge, the issue is quite straightforward. The professionals are working to maximize recovery for the benefit of all of the stakeholders, including the secured creditors, and the risk should be borne by all the stakeholders, including the secured creditors. It is not appropriate to ask the professionals to do the work, and to expect them to assume the risk of non-payment.

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<sup>2</sup> The capitalized terms in this judgment are defined in the Initial Order.

[9] The same argument applies at least in part to the directors. They are in a somewhat worse position than the professionals, because instead of the risk of non-payment of fees, it is the risk of incurring liabilities.

[10] The issue with respect to the directors is complicated by two arguments:

1. they can resign and avoid the risk of incurring any liability; and
2. they are indemnified by Cliffs Natural Resources Inc., the ultimate parent of the CCAA Parties.

[11] The evidence before me is that the directors will resign if the Directors' Charge is not given priority. It is not in anyone's interest they do so. I agree that the apocalyptic language in *Timminco*<sup>3</sup> is not applicable here and there is no "overwhelming likelihood" that there will be a bankruptcy if the directors resign. However, it is clear that the directors have a valuable role to play in the CCAA process and that their departure would have negative consequences for the stakeholders, including the secured creditors.

[12] The indemnification by Cliffs Natural Resources does not come into play because the directors have indicated that they will resign if they do not get the priority. If they are not prepared to proceed on the basis of the Cliffs Natural Resources indemnification, the argument that they should be prepared to do so has no value.

[13] As a result, I am prepared to amend the Initial Order to give priority to the Directors' Charge and the Administrators' Charge over the Encumbrances. The subrogation language proposed by Me Kandestin and agreed to by the other parties ensures that the risk is spread among all of the creditors and is not borne solely by the secured creditor whose assets may be used to pay the Directors' Charge or the Administration Charge.

[14] The remaining issue is the amount of the Charges.

[15] The Directors' Charge is being reduced from \$3.5 million to \$2.5 million at the suggestion of the CCAA Parties and with the consent of the directors and the support of the Monitor. The creditors would like to see it reduced further.

[16] Mr Meakins explained that the amount of the Directors' Charge was based on the potential amounts outstanding as salaries, vacation pay, deductions at source, sales taxes and pension contributions. The amount was reduced to reflect the reduced operations and therefore the reduction in potential sales tax liabilities. The amount of \$2.5 million appears to me to be reasonable. It may be appropriate to reduce it further in the future if the CCAA Parties' reduced operations result in a significant reduction in the workforce. I leave that issue for another day.

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<sup>3</sup> *Timminco Limited (Re)*, 2012 ONSC 506, par. 66.

[17] The justification for the amount of the Administration Charge is somewhat looser. The professional fees in the cash flow projection are \$4,355,000 for 13 weeks, or \$335,000 per week. The amount of \$2.5 million is therefore equivalent to 7.5 weeks.

[18] While it is true that the Initial Order requires the debtors to pay these fees weekly (paragraph 44), the protection of the Administration Charge should cover several weeks because of the delays inherent in the billing and payment process. Moreover, there needs to be some added protection because it is not in anyone's interest that the professionals put their pens down at the first sign of trouble, because the protection afforded to them by the Administration Charge is inadequate.

[19] For these reasons, I consider the amount of the Administration Charge to be reasonable.

[20] **FOR THE REASONS GIVEN ORALLY AND NUMERICALLY RECORDED, THE COURT:**

[21] **GRANTS** the Petitioners' motion for an order extending the stay period and amending the Initial Order;

[22] **SIGNS** the draft order submitted by the Petitioners.

  
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Stephen W. Hamilton, J.S.C.

Me Bernard Boucher  
Me Sébastien Guy  
Me Steven Weisz  
Me Caroline Dion  
BLAKE CASSELS & GRAYDON S R L  
for:  
Bloom Lake General Partner Limited  
Quinto Mining Corporation  
8568391 Canada Limited  
Cliffs Quebec Iron Mining ULC  
The Bloom Lake Iron Ore Mine Limited Partnership  
Bloom Lake Railway company Limited

Me Adrew Winton  
Me Matthew Gottlieb  
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Independent Counsel for the Board of Directors of the Petitioners

500-11-048114-157

PAGE: 5

Mr Sylvain Rigaud  
NORTON ROSE FULBRIGHT  
for:  
FTI Consulting Canada Inc.

Me Gerald Kandestin  
Me David Stolow  
KUGLER KANDESTIN  
for:  
Bank of Nova Scotia

Me Gerry Apostolatos  
Me Dimitri Maniatis  
LANGLOIS KRONSTRÖM DESJARDINS  
for:  
Quebec North Shore and Labrador Railway Company inc.  
Air Inuit Ltd.  
Metso Shared Services Ltd.

Me Bertrand Giroux  
Me John Siwec  
BCF  
for:  
WorldLink Resources Limited

Me Brandon Farber  
FASKEN MARTINEAU  
for:  
Beumer Corporation  
Dexter Québec

Me François Gagnon  
BORDEN LADNER GERVAIS  
for :  
Gérald Leblond Ltée.  
Groupe UNNU-EBC S.E.N.C.  
Construction L.F.G. inc.

Me Caroline Briand  
for :  
City of Fermont

500-11-048114-157

PAGE: 6

Me Marie-Claude Falandeu  
for:  
Procureur général du Québec

Me Gary Rivard  
BCF  
for:  
Regions Commercial Equipment Finance, LLC

Date of hearing: February 19, 20, 2015