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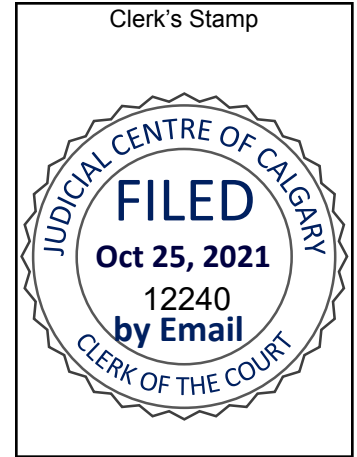
COURT FILE NUMBER 2101-05019

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

And in the Matter of the Compromise or Arrangement of Coalspur Mines (Operations) Ltd.



HK \$50

DOCUMENT Application by Whirlybyrds Inc., Claimant

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Civil Chambers - Virtual Courtroom 58 (CCC QB)

NOTICE TO RESPONDENTS: FTI CONSULTING CANADA INC. (the "Monitor") and COALSPUR MINES (OPERATIONS) LTD. (the "Applicant")

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date: November 17, 2021
Time: 10:00 A.M.
Where: Calgary Courts Centre
Before Whom: Justice in Chambers, by Webex

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order:
 - a. Declaring that the time for service of this Application and supporting documents is abridged, and that service is deemed good and sufficient;
 - b. Striking or overturning the Notice of Revision or Disallowance of Claim respecting the claim of Whirlybyrds Inc., Claim# 10 in the within proceedings;

- c. Allowing the claim in full or in part of Whirlybyrds Inc. including an allowance for a security claim against certain materials and assets in these proceedings;
 - d. Confirming the validity of the Builders' Liens of Whirlybyrds Inc. registered against the following Coal Lease Agreement Numbers:
 - i. 013 1307050798; and,
 - ii. 013 1307070588(the "Leases").
2. A judgment, declaration, or order that:
- a. Whirlybyrds is entitled to a valid and subsisting charge under the *Builders' Lien Act*, RSA 2000, c. B-7 (the "*BLA*") against the Leases and the minerals severed from lands leased under the Leases in the amount of \$466,406.50, plus interest pursuant to the *Judgment Interest Act*, RSA 2000, c. J-1;
 - b. An accounting of all minerals, or any monies paid to Coalspur therefore, which have been severed from the lands leased under the Leases since Whirlybyrds's builder's lien came into existence, shall be delivered to Whirlybyrds by a deadline set by this Honourable Court;
 - c. In default of payment of the judgment amount, Coalspur's interests in the Leases or any minerals which have been severed from the lands described by the Leases shall be sold and the proceeds applied in accordance with the *BLA*;
 - d. Whirlybyrds's liens have a priority interest in the Leases;
 - e. A receiver of the Leases and revenue against which the liens are registered shall be appointed pursuant to the *BLA*; and,
 - f. Further and other relief as may be requested and this Honourable Court may deem fit to grant.

Grounds for making this application:

The Parties

3. Whirlybyrds Inc. ("Whirlybyrds"), is a corporation incorporated pursuant to the laws of, and carrying on business in, the Province of Alberta. Whirlybyrds has its head office in Calgary, Alberta.
4. Coalspur Mines (Operations) Ltd. ("Coalspur") is a corporation incorporated pursuant to the laws of, and carrying on business in, the Province of Alberta.

5. Coalspur was the applicant made subject to the within proceedings by the CCAA Initial Order filed on April 27, 2021.
6. Stillwater Supply Corp. ("Stillwater") is a corporation incorporated pursuant to the laws of, and carrying on business in, the Province of Alberta.

The Rental

7. Pursuant to a rental agreement dated November 19, 2019 (the "Rental Agreement"), Whirlybyrds rented various equipment and hired various personnel to Stillwater, which equipment and personnel included:
 - a. Five (5) KW7000 centrifuges;
 - b. One (1) KW5200 centrifuge;
 - c. Two (2) trained personnel on site, including vehicles and travel; and,
 - d. Further and other equipment and personnel as may be proven at the Trial of this Action

(the "Rental").
8. Insofar as is known to Whirlybyrds, the Rental was for the express purpose of maintaining and continuing a contract between Stillwater and Coalspur to improve Coalspur's mining operations in Hinton, Alberta, and the Rental did maintain and continue that contract and improved Coalspur's mining operations.
9. It was an express term of the Rental Agreement that Stillwater would:
 - a. Maintain its contract with Coalspur;
 - b. Provide thirty (30) days written notice of cancellation of the Rental Agreement;
 - c. Pay all invoices for rent owing on the Rental within thirty (30) days of the rent being invoiced;
 - d. Maintain the equipment which was subject to the Rental; and,
 - e. Further and other terms of the Rental Agreement as may be proven at the Trial of this Action.
10. From December 2019 through February 2020, Whirlybyrds provided the Rental to Stillwater or made the equipment referred to therein exclusively available to Stillwater and duly invoiced Stillwater on the dates and for the amounts shown below:

| Date of Invoice | Invoiced Amount |
|-----------------|-----------------|
|-----------------|-----------------|

| | |
|-------------------|--------------|
| December 31, 2019 | \$126,420.00 |
| December 31, 2019 | \$3,793.74 |
| January 31, 2020 | \$168,192.76 |
| February 18, 2020 | \$168,000.00 |

(collectively, the "Invoices").

11. Stillwater has failed to make payment on any of the Invoices in any amount and is justly and truly indebted to Whirlybyrds in the amount of \$466,406.50.
12. At no time has Stillwater raised any concerns of deficiencies in or problems with the Rental or any breaches of the Rental Agreement by Whirlybyrds, and Whirlybyrds denies committing any such deficiencies, problems, or breaches.
13. In the event that there have been any such deficiencies, problems, or breaches, Whirlybyrds denies liability therefore on the basis of having never been provided an opportunity to rectify such deficiencies, problems, or breaches.

The Liens

14. Insofar as is known to Whirlybyrds, the Rental was used by Stillwater, as a contractor or a subcontractor, to improve the preparation of, in connection with, or for an abandonment operation in connection with, the recovery of various minerals by Coalspur pursuant to the Leases.
15. As a result of the Rental being used in the way described, Whirlybyrds became entitled to a builder's lien on the Leases.
16. On or about February 28, 2020, Whirlybyrds registered its builders' liens with Alberta Energy against the Leases.
17. Whirlybyrds continues to possess a valid and subsisting lien against the Leases and against the minerals which have been severed from the lands subject to the Leases.
18. Whirlybyrds pleads and relies upon the provisions of the *BLA*, as amended and in force.

The Proceedings

19. Whirlybyrds commenced Action No. 2001-09957 before this Honourable Court on August 17, 2020 as enforcement of the Liens and claim in respect of the Invoices.
20. Whirlybyrds registered a *Certificate of Lis Pendens* respecting the same with Alberta Energy on August 24, 2021.

21. Whirlybyrds submitted a proof of claim pursuant to the Claims Process Order in this Action dated August 9, 2021.
22. On or about October 9, 2021, Whirlybyrds was served a Notice of Disallowance in response to its proof of claim, disallowing Whirlybyrds' claim in full.

Material or evidence to be relied on:

23. Affidavit of Rodney Wick, sworn on December 3, 2020 and filed in Action No. 2001-09957; and,
24. Further and other evidence as may be filed at a later date, and this Honourable Court may deem fit to consider

Applicable Rules:

25. Rules 1.2, 1.3, 1.4, 6.3, 10.29, 10.31, 10.33.

Applicable Acts and Regulations:

26. *Judicature Act*, RSA 2000, c. J-2

Any irregularity complained of or objection relied on:

27. None.

How the application is proposed to be heard or considered:

28. Via Webex, with one, some, or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.