



FORM 27
[RULES 6.3 AND 10.52(1)]



\$50
COM
July 9, 2021
Justice Romaine

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.

DOCUMENT **APPLICATION BY RIDLEY TERMINALS
INC.**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT **BENNETT JONES LLP**
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: David Gruber/Keely Cameron
Telephone No.: 604-891-5150/403-298-3324
Fax No.: 604-891-5100
GruberD@Bennettjones.com
Cameronk@Bennettjones.com
Client File No.: 91815.1

NOTICE TO RESPONDENTS: THE SERVICE LIST

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

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

Date: Friday, July 9, 2021
Time: 10:00 a.m.
Where: Calgary Courts Centre (Via Webex Video Confernece)
Before Whom: The Honourable Madam Justice B.E. Romaine

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 substantially in the form attached hereto as **Schedule "A"**:
 - (a) abridging time for service of this application and the materials filed in support thereof, deeming service good and sufficient, if necessary;
 - (b) declaring that Coalspur Mines (Operations) Ltd. ("**Coalspur**") is bound by all its contractual obligations under the January 1, 2018 Terminal Agreement; July 1, 2020 Settlement Agreement and Mutual Release; and February 13, 2021 Letter Agreement, dated February 13, 2021 (collectively, the "**Agreements**"); and
 - (c) declaring that pursuant to section 32 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended (the "**CCAA**") that the Agreements are not to be disclaimed or resiliated.
2. Such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

3. The Ridley Port Rupert Terminal ("**Ridley Terminal**") is one of only two operating coal terminals on the west coast of North America.
4. Coalspur entered into an agreement dated October 26, 2011 with Ridley Terminals Inc. ("**Ridley**") for the shipment of Coalspur's coal through the Ridley Terminal (the "**2011 Agreement**"). Under the 2011 Agreement, Ridley would provide up to 8.5 million metric tonnes of port allocation for a period up to 21 years.
5. Between 2012 and 2015 Ridley underwent approximately \$200 Million (CAD) in capital expenditures to upgrade facilities and invest in additional capacity to accommodate Coalspur and other clients.

6. Following the acquisition of Coalspur by the Cline Group LLC, Ridley agreed to renegotiate the 2011 Agreement, and the parties entered into the Terminal Services Agreement, dated January 1, 2018 ("**Terminal Services Agreement**").
7. The Terminal Services Agreement contemplates that, among other things, all production from the Project destined for export from North America will be shipped exclusively through the Ridley Terminal.
8. Since 2018, Ridley has invested approximately \$59 Million (CAD) in capital expenditures and investments specifically to service the Terminal Services Agreement and the anticipated volumes of coal shipments from Coalspur. Ridley would not have made those investments if it had not been for the Exclusivity Clause and the minimum throughput provisions.
9. In 2019, Ridley failed to deliver the committed volume under the Terminal Services Agreement and was liable for a shortfall penalty of approximately \$10.5 Million. Rather than proceed to arbitration as contemplated under the Terminal Services Agreement, Ridley agreed to enter into the July 1, 2020 Settlement Agreement and Mutual Release.
10. In or around February 2021, Coalspur was again in breach of its obligations, having failed to provide payment when due. Ridley again agreed to work with Coalspur and entered into the February 13, 2021, Letter Agreement to facilitate repayment of approximately \$11.6 Million.
11. On April 26, 2021, Coalspur commenced proceedings under the CCAA.
12. On May 5, 2021, Counsel for Ridley requested confirmation that Coalspur would be complying with its obligations under the Agreements, specifically whether it would be complying with the exclusivity provision. No response was received.
13. On May 6, 2021, Coalspur obtained an Amended and Restated Initial Order ("**ARIO**"). Neither in its evidence filed for the hearing nor in its submissions to the Court did Coalspur indicate that it intended to breach the Agreements. Had Ridley been advised that Coalspur intended to breach the Agreements, it could have sought a carve-out from

the stay of proceedings instead of permitting the application for the ARIO to go unopposed.

14. On May 7, 2021, Ridley learned through CN that a Coalspur train had been released headed to a terminal other than the Ridley Terminal, in contravention of the Agreements. Later that day, Coalspur provided Ridley with a Notice of Disclaimer of the Agreements.
15. The disclaimer or resiliation should not be permitted as:
 - (a) The Monitor approved the disclaimer without due regard to or consideration as to the availability of options and the impacts of the disclaimer on Ridley;
 - (b) Coalspur has failed to explore alternatives and negotiate with Ridley in good faith;
 - (c) Coalspur has failed to establish that the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement having only provided general and unsubstantiated information;
 - (d) The disclaimer or resiliation of the Agreement is likely to cause significant financial hardship to Ridley and the community of Port Rupert, and may result in Ridley's own insolvency; and
 - (e) Coalspur has acted in bad faith.
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

17. the pleadings and proceedings had and taken in the within matter;
18. the Affidavit of Robert Booker, sworn May 21, 2021;
19. the Affidavit of Cordell Dixon, sworn May 21, 2021; and
20. such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

21. Alberta *Rules of Court*, AR 124/2010 and in particular Rules 1.3, 3.75, 6.3, 6.4, 11.27, 11.29 and 13.5.
22. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

23. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36; and
24. such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

25. none.

How the application is proposed to be heard or considered:

26. By videoconference before the Honourable Madam Justice B. E. Romaine with one or more 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(s) 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 in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

CLERK'S STAMP

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.

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: David Gruber/Keely Cameron
Telephone No.: 604-891-5150/403-298-3324
Fax No.: 604-891-5100
Client File No.: 91815.1

**DATE ON WHICH ORDER WAS
PRONOUNCED:**

June 16, 2021

**LOCATION OF HEARING OR
TRIAL:**

Calgary, Alberta

**NAME OF MASTER/JUDGE
WHO MADE THIS ORDER:**

The Honourable Madam Justice B. E. Romaine

UPON THE APPLICATION OF Ridley Terminals Inc. ("**Ridley**"); AND UPON reading the Affidavit of Robert Booker sworn May 21, 2021; AND UPON reading the Affidavit of Cordell Dixon sworn May 21, 2021; AND UPON hearing counsel for Ridley and counsel for Coalspur Mines (Operations) Ltd. ("**Coalspur**") and any other interested party;

IT IS ORDERED AND DECLARED THAT:

SERVICE AND NOTICE OF THE APPLCIATION

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

NO DISCLAIMER OF THE RIDLEY AGREEMENTS

2. In accordance with section 32 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 as amended (the "CCAA"), the following agreements as between Ridley and Coalspur have not been disclaimed or resiliated:

- (a) the January 1, 2018 Terminal Services Agreement;
- (b) the July 1, 2020 Settlement Agreement and Mutual Release; and
- (c) the February 13, 2021 Letter Agreement.

(Collectively, the "Agreements").

3. The notice given by Coalspur to disclaim the Agreements on May 7, 2021 is invalid.
4. Coalspur is bound by the provisions of the Agreements and shall compensate Ridley for its post CCAA filing breaches of the Agreements.

SERVICE OF ORDER

5. This Order must only be served upon those interested parties that attended or were represented at the within application and service may be effected by facsimile, electronic mail, personal delivery, courier, or regular mail.

J.C.Q.B.A.