



No. S-224444  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF A PLAN OR COMPROMISE AND ARRANGEMENT OF  
CANADIAN DEHUA INTERNATIONAL MINES GROUP INC., WAPITI COKING COAL  
MINES CORP. AND CANADIAN BULLMOOSE MINES CO., LTD.

PETITIONERS

## **APPLICATION RESPONSE**

**Application response of: TaneMuhata Capital, Ltd. and Aref Amanat, (the "Application Respondents")**

THIS IS A RESPONSE TO the Notice of Application of Qu Bo Liu filed December 31, 2024.

The Application Respondents estimate that the Application will take 2 DAYS.

### **Part 1: ORDERS CONSENTED TO**

The Application Respondents consent to the granting of NONE of the Orders set out in Part 1 of the Notice of Application on the following terms

### **Part 2: ORDERS OPPOSED**

The Application Respondents oppose the granting of the Orders set out in paragraphs 1-4 of Part 1 of the Notice of Application.

### **Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Application Respondents take no position on the granting of the Orders set out in paragraphs NONE of Part 1 of the Notice of Application.

## **Part 4: FACTUAL BASIS**

### **Overview**

1. This is an application brought by Qu Bo Liu (the “**applicant**” or “**Mrs. Liu**”) for extraordinary relief. She seeks legal costs and other professional fees to be paid on a full indemnity basis against not only TaneMuhata Capital Ltd. (“**TMC**”) and West Moberly First Nations, but also their counsel, Aref Hossein Amanat and Karen Fellowes K.C.
2. The allegations against the Application Respondents, West Moberly, and Ms. Fellowes K.C. – that they “undertook a charade” and made “extraordinary efforts” to deceive and mislead the court – are unfounded. The decision to not disclose the agency relationship was made for sound commercial reasons and Mr. Amanat could not have made this disclosure without breaching solicitor client privilege.
3. There is a high threshold that the applicant must meet in order to prove that the Application Respondents’ conduct is deserving of the severe sanctions that Mrs. Liu seeks. That threshold has not been met here: at all times, the Application Respondents acted in good faith and did not have any intention of misleading the court.
4. This application serves only to draw the Court’s focus away from the primary issue of which bid should be approved by this Court by attacking the conduct of the bidder.

### **Background**

5. The petitioner, Canadian Dehua International Mines Group Inc. (“**CDI**”) was granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) on June 3, 2022. FTI consulting Inc. was appointed monitor.
6. CDI owns the shares of Wapiti Coking Col Mines Corporation (“**Wapiti**”) and Canadian Bullmoose Mines Co. Ltd (“**Bullmoose**”).
7. CDI, Bullmoose, and Wapiti hold mineral titles for coal mine ventures in Northeastern British Columbia (the “**Bullmoose Project**” and the “**Wapiti Project**”).
8. On August 18, 2022, the court granted approval to CDI commence a sale and investment solicitation process to allow for the sale of the Wapiti Project.
9. On November 30, 2022, the court approved a modified sale and investment solicitation process which provided for the sale of both the Wapiti and Bullmoose

Projects along with a third project – the Murray River Project – not at issue in this application.

### **TMC as Agent for West Moberly**

10. Around September 2023, West Moberly learned of this sales process and wrote a letter to the Monitor to express West Moberly's position with respect to the sale, opposing the development of CDI's coal assets, citing concerns about stewardship objectives.

Affidavit #1 of Roland Willson ("Willson Affidavit"), Exhibit A

11. In order to balance those objectives, West Moberly wanted to explore the acquisition of the coal assets, but felt that they should keep their role in any acquisition private, in order to:
  - (a) avoid speculation in the northern community about their intention regarding the licenses;
  - (b) avoid any interference with negotiations with others in relation to conservation issues; and
  - (c) maintain its confidentiality obligations to the Canadian source of their funding for the purchase.

Willson Affidavit, paras. 16 and 22

12. Around the same time as West Moberly sent their September 30, 2023 letter, they retained Mr. Amanat to handle the acquisition for them and without disclosing their role and interests. West Moberly also engaged Ms. Fellowes, K.C.

Willson Affidavit, para. 17

13. Mr. Amanat engaged in the CCAA process as agent for West Moberly through his role as president of TMC.
14. In September 2023, TMC received access to a data room in the CCAA proceeding after signing a non-disclosure agreement.
15. On July 3, 2024, in his role as president of TMC, Mr. Amanat wrote to the Monitor stating that TMC was interested in purchasing the licenses and other assets owned by CDI, Wapiti and Bullmoose for \$400,000.

Affidavit #1 of Nadia Walnicki ("Walnicki Affidavit"), Ex. B

16. On July 9, 2024, Mr. Amanat sent a revised letter of intent to the Monitor requesting an exclusivity period.

Affidavit #1 of Xiao Liu ("Liu Affidavit #1") at Ex. I

17. CDI and the Monitor advised that the price was too low and the period of exclusivity was not acceptable, and that another party, Mrs. Liu, was likely to make a credit bid.

Walnicki Affidavit, Ex. E

18. On August 30, 2024, the court ordered that binding offers for the Wapiti and Bullmoose assets shall be submitted to the Monitor by 4 pm on September 6, 2024 which offers would be considered at a hearing on September 17, 2024.

Walnicki Affidavit, Ex. F

### **September and October 2024 Bids**

19. On September 6, 2024, both Mrs. Liu (the debtor-in possession lender) and TMC made offers to purchase the assets.
20. Mrs. Liu's offer was \$1,650,000 comprised of \$200,000 in cash and the balance offset against the DIP loan that she had previously provided to CDI.
21. TMC made an offer in its own name as agent for its undisclosed principal, West Moberly. The offer was for \$650,000 and they delivered a cash deposit for that full amount to the Monitor.

Affidavit #2 of Elyssa Boongaling ("Boongaling Affidavit #2), Ex. Q

22. On October 9, 2024, pursuant to the August 30, 2024 order, a hearing occurred to consider the purchase of the assets and to hear an application by CDI to permit Wapiti and Bullmoose to be added as petitioners in order to allow their assets to be acquired by the bidders.
23. At the October 9 2024 hearing, the Court required an amendment to TMC's purchase agreement to indicate TMC was prepared to purchase the assets of the subsidiaries on an "as is where is" basis. As the offers currently stood, the Court indicated that Mrs. Liu's offer was better.

24. On October 9, 2024, the court ordered that the two subsidiaries be added as petitioners.

Walnicki Affidavit, Ex. I

25. On October 10, 2024, CDI filed an application for approval of a subsequent offer from Mrs. Liu to purchase the coal assets. The purchase agreement was dated October 9 2024 with the same price as Mrs. Liu's September 6, 2024 offer.

26. On October 15, 2024, TMC filed its own application seeking orders:

- (a) permitting it to put forward a revised offer for the assets for a price of \$2 million pursuant to a purchase agreement that had been approved by CDI; and
- (b) approval of that order.

27. Hearings on those applications occurred on October 17, 19, 21 and 22, 2024. At that hearing, counsel for Mrs. Liu made submissions raising concerns about the source of TMC's funding and the objectives of the acquisition. On October 22, 2024, to address the submissions of Mrs. Liu, Ms. Fellowes K.C. put forward a second affidavit of Mr. Amanat.

28. In the October 2022 hearings, the Court did not approve any sale of the coal assets but instead directed a cross-examination of Mr. Amanat on an affidavit in his name.

29. A judicial management conference occurred on November 19, 2024, confirming the cross-examination of Mr. Amanat by December 16, 2024.

Walnicki Affidavit, Ex. J

### **TMC's Bid Withdrawal and West Moberly's Offer**

30. Following the judicial management conference, Mr. Amanat on behalf of TMC filed a notice of intention to act in person.

Walnicki Affidavit, Ex. K

31. In a letter dated November 25 2024, in response to concerns about the source of TMC's funding, counsel for West Moberly wrote to the Monitor advising that:

- (a) TMC had been acting as West Moberly's agent in making prior bids;
- (b) the source of the TMC's finding was West Moberly;

- (c) that West Moberly wished to keep its involvement confidential in order to preserve its efforts towards recovery of caribou populations, land stewardship, and self-determination;
- (d) West Moberly was offering to purchase the assets for \$2.2 million.

Wilson Affidavit, Ex. C

32. On November 26, 2024, following direction from West Moberly, Mr. Amanat on behalf of TMC wrote to the Monitor, withdrawing from its offer and its position in the proceeding and attaching its Notice of Intention to Act in Person in these proceedings.

Walnicki Affidavit, Ex. K

**The Applicant has Made Unfounded Allegations against Mr. Amanat, TMC, West Moberly, and Ms. Fellowes, K.C.**

33. The applicant alleges that TMC and Mr. Amanat mislead the court by failing to disclose the agency relationship, by:
- (a) representing that TMC was acting on its own account;
  - (b) that Mr. Amanat was acting as its director, when in fact he was acting as lawyer for West Moberly;
  - (c) submitting offers in the name of TMC, representing that TMC was interested in the assets solely for environmental protection and with limited resources without revealing that the offer was actually made by West Moberly using their funds;
  - (d) making submissions without revealing he was also counsel for West Moberly;
  - (e) making due diligence requests of CDI and advising CDI and the Monitor of intentions to submit a revised offer in TMC's name; and
  - (f) filing a notice of application in TMC's name when the "actual applicant" was West Moberly.
34. The Application Respondents, West Moberly, and Ms. Fellowes K.C. have not deliberately misled the court.

35. TMC is its own legal entity with the ability to act in its own name and capacity to bring applications and enter into contracts. The fact that TMC was an agent for West Moberly does not negate its legal personality.
36. TMC, with Mr. Amanat acting as its majority shareholder and president was itself a participant in the proceeding. Mr. Amanat had dual role of president of TMC and counsel for West Moberly and appeared on behalf of TMC in court as its president, rather than as counsel for West Moberly. His role in the CCAA proceedings was to act as President of TMC.
37. As agent for West Moberly, TMC's role was to further West Moberly's stewardship and objectives, which include broad conservation purposes that could be achieved through development of some coal assets. When making offers and indicating that coal assets were being acquired for conservation purposes, Mr. Amanat was being truthful.

Willson Affidavit, paras. 10-12

38. It is also not inconsistent for TMC to request due diligence if TMC's goal was conservation: it was still appropriate as a matter of prudence that TMC learns details of the assets it was purchasing – including potential liabilities – even if it did not have commercial development goals. The need for diligence is also consistent with West Moberly's broad conservation goals.

Willson Affidavit, Ex, C

39. The applicant has also made allegations that Mr. Amanat has delayed this proceeding by:
  - (a) failing to provide availability for his cross-examination;
  - (b) replacing Ms. Fellowes K.C. with other counsel, thus delaying the process for cross-examination;
  - (c) having counsel make submissions on November 19, 2024 to withdraw the second affidavit of Mr. Amanat; and
  - (d) requiring an additional hearing on December 2, 2024.
40. All of these steps were taken for legitimate reasons: while Ms. Fellowes K.C. was experienced insolvency counsel, Mr. Amanat also thought it prudent to retain B.C. litigation counsel to defend his cross-examination. The process of finding and retaining counsel with availability took time.

41. Mr. Amanat attended his cross examination on December 10, 2024, brought the records that were requested of him (except those on which he claimed privilege) and provided his evidence truthfully.
42. Third, the applicant has alleged that TMC and Ms. Fellowes K.C. made unfounded allegations of bad faith and fraudulent conduct against Mrs. Liu. These allegations had a reasonable basis and were made in part based on transferred of Wapiti coal licenses to a company controlled by Mrs. Liu's son.
43. There has been no investigation with respect to the circumstances surrounding the transfer of the Wapiti coal licenses and there has been no determination by the court that Mrs. Liu did not fraudulently convey those licenses to her son's company. The Monitor confirmed that the "optics surrounding the events of the coal licenses is not ideal."

19<sup>th</sup> Report of the Monitor

#### **Part 5: LEGAL BASIS**

1. In her application, Mrs. Liu seeks awards for certain costs to be paid by the Application Respondents, West Moberly, and Ms. Fellowes K.C. These costs include not only the legal fees incurred by Mrs. Liu since October 30, 2024 – on a full indemnity basis – but also the amount secured by the Administrative Charge of \$350,000 and any professional fees incurred by the Monitor and its legal counsel.
2. The standard of conduct that is required for the Court to grant such an exceptional award is very high. There is no basis for this Court to grant the orders sought: at all times the Application Respondents acted in good faith in not disclosing the identity of the principal or the nature of the agency relationship and made that judgment call based on legitimate commercial reasoning. They had no subjective intention to conceal any material facts nor mislead the court.

#### **Costs Against Counsel**

3. The applicant has a heavy burden to prove that the Application Respondents' conduct was so reprehensible such that that it warrants the court to make an award of special costs against counsel. The conduct of the Application Respondents has not met this standard and, for the reasons that follow, is not tantamount to misleading the court.



4. Rule 14-1(33) provides that an order of costs can be made against counsel personally if the circumstances require. Pursuant to this rule, the Court can effectively make any order if a party's lawyer has caused costs to be incurred without reasonable cause, or has caused costs to be wasted through delay, neglect, or some other fault.
5. This rule does not distinguish between party and party costs and special costs. Regardless, it is clear from the case law that there is a high bar to meet for a court to make such an order against counsel personally:

[25] While the courts do have the power to award costs against a lawyer personally, the threshold for exercising it is a high one. It is in fact rarely exercised, and the question whether it should be arises only infrequently: *Cronier*; *Young*; *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575, at para. 85; *R. v. Trang*, 2002 ABQB 744, 323 A.R. 297, at para. 481; *Fearn v. Canada Customs*, 2014 ABQB 114, 586 A.R. 23, at para. 121; *Smith*, at para. 43. Only serious misconduct can justify such a sanction against a lawyer. Moreover, the courts must be cautious in imposing it in light of the duties owed by lawyers to their clients:

Moreover, courts must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular causes. A lawyer should not be placed in a situation where his or her fear of an adverse order of costs may conflict with these fundamental duties of his or her calling.

(*Young*, at p. 136)

[26] The type of conduct that can be sanctioned in this way was analyzed in depth in *Cronier*. L'Heureux-Dubé J.A. concluded after reviewing the case law that the courts are justified in exercising such a discretion in cases involving abuse of process, frivolous proceedings, misconduct or dishonesty; or actions taken for ulterior motives, where the effect is to seriously undermine the authority of the courts or to seriously interfere with the administration of justice. She noted, however, that this power must not be exercised in an arbitrary and unlimited manner, but rather with restraint and caution. The motion judge in the case at bar properly relied on *Cronier*, and the Court of Appeal also endorsed the principles stated in it.

*Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin*, 2017 SCC 26

6. On top of the very high threshold that must be met for the court to be willing to order costs against counsel personally, to take that one step further to justify an award of special costs, the conduct in question must be reprehensible.

*Nuttall v. Krekovic*, 2018 BCCA 341 at para. 35

**Mr. Amanat was not Required to Disclose the Existence of the Agency Relationship**

7. The primary allegation that the applicant relies on to justify the costs award is that Mr. Amanat and Ms. Fellowes, K.C. deliberately concealed the fact that they both represented West Moberly, who was the undisclosed principal to the bid put forward by TMC.
8. This is not a decision that deserves to be sanctioned by this Court. The Application Respondents had no positive obligation to disclose that agency relationship and could not have done so without breaching solicitor-client privilege they owed to West Moberly. Mr. Amanat believed that the agency was not material to the sales process or the bid and would not impact the administration of justice in any way.
9. The applicant counters this argument with what she says is a “foundational principle” in British Columbia: that the court must know the identity of the parties appearing before it. In support of this, she quotes in her notice of application an excerpt from *Festing v Canada (Attorney General)*, 2001 BCCA 612, which cites *Re United States of America v. Mammoth Oil Co.* 1925 CanLII 410 (ON CA).
10. However, the applicant fails to include the subsequent paragraphs of *Festing*, which cite that in *Re United States of America v. Mammoth Oil Co.*, 1925 CanLII 410 (ON CA), the appeal from the trial decision of *Mammoth Oil Co.*, Ferguson J.A. for the majority disputes that proposition that the court must know the identity of the parties appearing before it:

[107] ... On appeal, however, Ferguson J.A. for the majority of the Court of Appeal disagreed. In his analysis:

Nor am I prepared to say that the result of the authorities is that privilege cannot be claimed without disclosing to the Court the name of the client or person on whose behalf it is claimed. I have read and considered the cases cited by counsel and, in my opinion, they do not carry the law that far, and it seems to me it should not be so held on principle. The principle is that mankind should be able and free to consult professional legal advisers without fear that their

confidential communications to such professional legal advisers shall be disclosed.

...

[108] In [*Lavallee Rackel and Heintz v. Canada (Attorney General)*, 2000 ABCA 54], the Alberta Court of Appeal took a similar view: [excerpt omitted].

11. The Supreme Court of Canada upheld the Alberta Court of Appeal decision in *Lavallee*, finding that “the name of the client may very well be protected by solicitor-client privilege, although that is not always the case.”

*Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, 2002 SCC 61 at para. 28

12. The courts have continued to accept that in certain circumstances, the name of the client or even the existence of a lawyer-client relationship can fall within the definition of solicitor-client privilege.

*PetroFrontier Corp v Macquarie Capital Markets Canada Ltd*, 2022 ABCA 136 at paras. 11-12

13. The other authorities cited by the applicant are distinguishable on the basis that they refer to a party or witness’s identity before the court: West Moberly was neither of those.

14. In this circumstance, it was Mr. Amanat’s position that identity of West Moberly as a client was privileged. West Moberly provided instructions to Mr. Amanat that they remain anonymous as an undisclosed principal for sound commercial reasons: that the funding they acquired for the bid is from a Canadian source under an agreement that requires West Moberly to keep it confidential and to avoid speculation in the broader northern community about West Moberly’s intended uses for the licenses. For Mr. Amanat to disclose that information would have breached that privilege.

Willson Affidavit at paras. 16 and 22

15. TMC appearing in court as agent for West Moberly would also not, as the applicant argues, be a waiver of that privilege. West Moberly was not a party seeking relief from the court, defending itself, or otherwise utilizing the court’s process such that the court’s benefit in knowing its identity would outweigh its right to solicitor-client privilege.

16. The offer also had an assignment provision which would allow the contract to be assigned from TMC to West Moberly: TMC had all intentions of buying the Bullmoose and Wapiti Assets as agent without West Moberly itself participating in the proceedings.

Boongaling Affidavit #2 at Ex. Q

17. There is additionally no positive requirement that an undisclosed principal or existence of an agency relationship be shared with another contracting party, and the applicants have not made any arguments to support that position.
18. Mr. Amanat's evidence was that he was not aware of any such requirement and that it is common in CCAA bidding for agents to act on behalf of an undisclosed principal. Undisclosed principals are common enough occurrence that the law supports privity of contract between an undisclosed principal and a third-party contractor who contracted with the principal's agent.

*Pemberton Music Festival Limited Partnership (Re)*, 2018 BCSC 1310 at paras. 29-30

19. There was no harm to the overall bidding and sale process by having an undisclosed agency relationship nor any prejudice created towards any of the other parties. It was the belief of the Application Respondents that the identity of the undisclosed principal was not a material fact that would impact the outcome of the sale and counsel for West Moberly had no ulterior intentions to mislead the court or conceal any material facts. Further, a special costs order is not justified only because counsel fails to disclose evidence that could ultimately prove to be material.

*Nuttall v. Krekovic*, 2018 BCCA 341 at para. 30

20. Once appropriate, West Moberly stepped forward and identified itself, providing sound commercial reasons for its desire to keep its role as principal confidential.

Willson Affidavit, Ex. C

### **The Application Respondents Acted in Good Faith at all Times**

21. The Application Respondents always operated in good faith as required by section 18.6 of the *Companies' Creditors Arrangements Act*, RSC 1985, c C-36.
22. For a party to act in contravention to their duty of good faith, there must be some subjective element of dishonesty (which can include failing to giving "appropriate

regard” to another party’s interests), untruthfulness, or improper motive. To find a breach of the duty of good faith based on dishonesty – without the subjective element of dishonesty – is an error of law.

*Greater Vancouver Sewerage and Drainage District v. Wastech Services Ltd.*,  
2019 BCCA 66 at para 74; *Wastech Services Ltd. v. Greater Vancouver  
Sewerage and Drainage District*, 2021 SCC 7 at para. 40

23. There is no subjective element demonstrating dishonesty or malice here, nor can the conduct be described as “reprehensible” such that an award of special costs is warranted. The Application Respondents took all steps that they did with on the basis that they felt those were the appropriate steps to take. They did not contemplate deception of either the court or other parties: the Application Respondents had a legitimate desire to maintain privilege and confidentiality on behalf of their clients and did not set out to intentionally or knowingly mislead other parties
24. For example, in paragraph 73 of its Notice of Application, the applicant alleges certain conduct that amounts to “extraordinary efforts to deceive the court”. None of the alleged conduct in that list was carried out in bad faith or with an intention to deceive, but instead to maintain the confidentiality of the agency relationship.
25. The applicant also makes allegations that TMC concealed its Central Securities Register and failed to produce financial documents when requested. Based on his understanding of section 49 of the *Business Corporations Act* SBC 2002, c. 57, Mr. Amanat did not believe that he had to make the CSR available for inspection without the specific process established in that section being followed.
26. In any event, and contrary to this allegation, Mr. Amanat disclosed those documents at the cross-examination on his second affidavit when it was required by court order. He attended that examination and provided truthful evidence.
27. The contents of the CSR were of little consequence and did not impact the bidding process in any significant way. Any delay caused by Mrs. Liu’s request to view the CSR was a result of her own speculations about TMC’s investors being connected to CDI’s creditors. Mr. Amanat’s actions are not an example of reprehensible conduct that is worthy of an award of special costs.

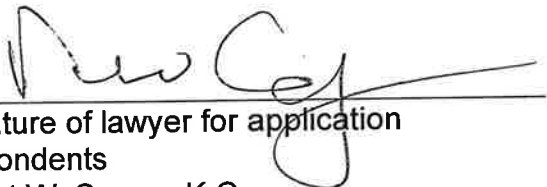
#### **Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Xiao (Helen) Liu made October 15, 2024.
2. Affidavit #2 of Elyssa Boongaling made December 23 2024.

3. Affidavit #1 of Roland Willson, made January 7, 2025.
  4. Affidavit #1 of Nadia Walnicki, made January 7, 2025.
  5. 19<sup>th</sup> Report of the Monitor;
  6. The pleadings and proceedings herein, and such further and other materials as counsel may advise and the court may permit.
- The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

c/o Robert W. Cooper, K.C.  
McEwan Cooper Kirkpatrick LLP  
900-980 Howe Street  
Vancouver BC V6Z 0C8

Date: January 10, 2025

  
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Signature of lawyer for application  
Respondents  
Robert W. Cooper K.C.

THIS APPLICATION RESPONSE was prepared by Robert W. Cooper K.C., of the firm of McEwan Cooper Kirkpatrick LLP, whose place of business and address for delivery is 900-980 Howe Street, Vancouver BC V6Z 0C8, Telephone: (604) 283-7740; Fax: (778) 300-9393.