



FORCE FILED

No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, C. 57, AS
AMENDED AND THE BUSINESS CORPORATIONS ACT, S.N.B. 1981, C. B-9.1, AS
AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI
MINING CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

NOTICE OF APPLICATION

Names of applicant: Trevali Mining Corporation, Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeanne Hull, Dan Isserow, and Richard Williams (the "Applicants")

To: The Service List

TAKE NOTICE that an application will be made by the Applicants to the Honourable Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, BC on March 17, 2025, at 10:00 a.m. for the orders set out in Part 1 below.

The Applicants estimate that the application will take 1 hour.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Applicants seeks an order substantially in the form attached hereto as Schedule "A" (the "Lift Stay Order") lifting the Stay of Proceedings (as defined below) for the sole purpose

of allowing the plaintiffs in *Demmer et al. v. Trevali Mining Corporation et al.*, SCBC Vancouver Registry No. VLC-S-S-228113 (the “**Class Action**”) to apply for:

- (a) an order of certification for settlement purposes, and
 - (b) an order approving the settlement agreement therein.
2. Such further orders as counsel for the Applicant may advise and this Court may deem appropriate in the circumstances.

Part 2: FACTUAL BASIS

Background

1. On August 19, 2022, this Court granted an Initial Order (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), granting, among other things, a stay of proceedings (the “**Stay of Proceedings**”) in favour of Trevali Mining Corporation (“**Trevali Corp.**”) and Trevali Mining (New Brunswick) Ltd. (“**Trevali NB**”, and collectively with Trevali Corp., “**Trevali**” or the “**Petitioners**”) until the initial return date of August 29, 2022.
2. On August 29, 2022, this Court granted the Amended and Restated Initial Order the (“**ARIO**”), which extended the Stay of Proceedings until October 6, 2022, among other matters. The Stay of Proceedings in respect of Trevali Corp. has been further extended as follows:
 - (a) until December 15, 2022, by the Order of this Court pronounced October 11, 2022;
 - (b) until January 27, 2023, by the Order of this Court pronounced December 14, 2022;
 - (c) until April 30, 2023, by the Order of this Court pronounced January 27, 2023;
 - (d) until June 2, 2023, by the Order of this Court pronounced April 24, 2023;
 - (e) until July 14, 2023, by the Order of this Court pronounced June 2, 2023;
 - (f) until October 27, 2023, by the Order of this Court pronounced June 28, 2023;

- (g) until April 26, 2024, by the Order of this Court pronounced October 25, 2023;
 - (h) until October 31, 2024, by the Order of this Court pronounced April 26, 2024; and
 - (i) until March 31, 2025 by the Order of this Court pronounced October 28, 2024.
3. On October 7, 2022, the members of the Ad Hoc Committee of Trevali shareholders (the “**Class Action Plaintiffs**”) filed the Class Action against Trevali Corp., Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams (the “**Class Action Defendants**”) for, *inter alia*; damages for alleged misrepresentations under Parts 16 and 16.1 of the *Securities Act*, R.S.B.C. 1996, c. 418 and section 227 of the *Business Corporation Act*, R.S.B.C. 2002, c. 57.
 4. The Class Action is subject to the Stay of Proceedings, as currently extended to March 31, 2025.
 5. On March 29, 2023, this Court ordered that the Class Action Plaintiffs be appointed to represent the interests of certain securities claimants (the “**Shareholder Representation Order**”). Further, the Shareholder Representation Order, among other things:
 - (a) appointed KND Complex Litigation (the “**Class Action Plaintiffs’ Counsel**”) as counsel to the Class Action Plaintiffs in this CCAA proceeding; and
 - (b) authorized the Class Action Plaintiffs and the Class Action Plaintiffs’ Counsel to take all steps and all acts necessary and desirable to carry out the terms of the Shareholder Representation Order.

Settlement

6. As a result of extensive negotiations, the Class Action Plaintiffs and Class Action Defendants, and the latter’s insurers, have now agreed to the full and final settlement of the Class Action, subject to the Court’s approval, on the terms and conditions set out in the settlement agreement between the Class Action Plaintiffs and the Class Action Defendants (the “**Settlement Agreement**”).

7. The Settlement Agreement provides for, *inter alia*:
 - (a) payment by the insurers of the Class Action Defendants of the sum of two million and eight hundred thousand dollars (CAD \$2,800,000) in full and final settlement of the Class Action, including all interest, taxes, fees, costs, expenses, disbursements, class counsel fees, administration expenses and litigation disbursements (the “**Settlement Amount**”);
 - (b) deposit of the Settlement Amount into the escrow account of the Class Action Plaintiffs’ Counsel within sixty (60) days from the order sought herein;
 - (c) full and complete releases by the Class Action Plaintiffs and the Class Members (as defined in the Settlement Agreement) of the Released Claims (as defined in the Settlement Agreement), which include all manner of claims arising out of the purchase or disposition by the Class Members of securities issued by Trevali Corp. and the allegations of the Class Action.
8. The Settlement Amount will be entirely paid by the Class Action Defendants’ insurers, and all Class Action Defendants will be released as a result of the Settlement Agreement.
9. The Settlement Agreement does not in any way constitute an admission of liability by the Class Action Defendants and is entered into for the sole purpose of avoiding further costs, delays, distractions and risks in connection with the Class Action.

Part 3: LEGAL BASIS

1. The Applicants relies on:
 - (a) the *CCAA*, in particular, sections 11 and 20;
 - (b) *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the “**Rules**”), in particular Rules 8-1 and 13-1;
 - (c) the inherent and equitable jurisdiction of this Court; and
 - (d) such further and other legal bases and authorities as counsel may advise and this Court may permit.

2. The *CCAA* grants this Honourable Court broad authority to make any order that it considers appropriate in the circumstances.

Canwest Global Communications Corp. (Re), 2009 CanLII 70508 (ONSC) at paras 27-28.

3. The Court has discretion to lift the Stay of Proceedings.

Yukon Zinc Corporation (Re), 2015 BCSC 1961, at para 26.

4. As with the imposition of a stay, the lifting of a stay is discretionary. There are no statutory guidelines or set circumstances for lifting a stay contained in the *CCAA*. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the *CCAA*, including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action. The overarching consideration is whether it is in the interests of justice to lift the stay.

Yukon Zinc Corporation (Re), 2015 BCSC 1961, at para 26.

5. The Applicants apply for a lift of the Stay of Proceedings for the sole purpose of seeking the approval of the Settlement Agreement from the Court, and all steps required to implement the Settlement Agreement.
6. The Settlement Agreement is in the best interests of all parties, including creditors, as it provides a resolution without further litigation or costs to the Petitioners. Granting the relief sought will not prejudice the Petitioners, creditors, or other stakeholders.
7. The Applicants anticipate that the court appointed monitor FTI Consulting Canada Inc. (the “**Monitor**”) will support the present Application, and the proposed settlement, namely given the fact that the parties are represented by experienced counsel, all issues have been settled, and no payment is to be made by the Petitioners.
8. It is in the interests of justice to lift the Stay of Proceedings for the limited purpose of granting an order for certification of the Class Action for settlement purposes and an order approving the Settlement Agreement.
9. The Applicants therefore respectfully requests this Court grant the Lift Stay Order.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of T. Gough, affirmed March 11, 2025.
2. Such further and other material as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: March 11, 2025



Signature of Applicants
 Lawyer for Applicants

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this notice of application

[] with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of [] Judge [] Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE A
[LIFT STAY ORDER]

IN THE SUPREME COURT OF BRITISH COLUMBIA

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1985, C. C-36, AS AMENDED

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PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE }
 } FITZPATRICK } 17/MAR/2025

ON THE APPLICATION of Trevali Mining Corporation, Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeanne Hull, Dan Isserow, and Richard Williams (the “**Applicants**”) dated March 11, 2025, coming on for hearing at Vancouver, British Columbia on March 17, 2025, AND ON HEARING Mary Buttery, KC, counsel for the Applicants, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that

1. The stay of proceedings herein is hereby lifted for the sole purpose of allowing the plaintiffs in *Demmer et al. v. Trevali Mining Corporation et al.*, SCBC Vancouver Registry No. VLC-S-S-228113 to apply for:

- (a) an order of certification for settlement purposes; and

- (b) an order approving the settlement agreement therein.
2. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicants is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Mary Buttery, KC
Counsel for the Applicants

By the Court.

Registrar

SCHEDULE "A"

LIST OF COUNSEL

| Counsel Name | Party Represented |
|--|--|
| Eamonn Watson | FTI Consulting Canada Inc., in its capacity as court-appointed monitor of Trevali Mining Corporation |
| Sage Nematollahi | Counsel to an ad hoc committee of Trevali Mining Corporation shareholders |
| Mary Buttery, KC, Lindsay Burgess, and Brodie Noga | Counsel for the Directors of Trevali Mining Corporation |
| Roderic Mclauchlan | Counsel for Beazley Canada Limited |
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ORDER MADE AFTER APPLICATION

OSLER, HOSKIN & HARCOURT LLP

Suite 3000, Bentall Four
1055 Dunsmuir Street
Vancouver, BC V7X 1K8

Attention: Mary Buttery, KC, Lindsay Burgess, and Brodie Noga
File No. 1239743