

ENTERED

Form 7
[Rule 3.8]



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 COM June 16 2021
503103
AND IN THE MATTER OF THE COMPROMISE OR J. Sheldon
ARRANGEMENT OF COALSPUR MINES (OPERATIONS) LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File Number: 1217428

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

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

Date: June 16 2021
Time: 1:00 p.m.
Where: Calgary Courts Centre (by WebEx)
Before: The Honourable Madam Justice B.E.C. Romaine

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

Order Sought:

1. The Applicant, Coalspur Mines (Operations) Ltd. (“**Coalspur**” or the “**Applicant**”), seeks an Order substantially in the form attached as Schedule “A” hereto:
 - (a) declaring that Coalspur is not compelled to perform the Ridley Agreement (as defined below) or remedy any existing defaults thereunder until the Ridley Agreement is disclaimed in accordance with the provisions of the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”);
 - (b) declaring that any amounts owing by Coalspur to Ridley Terminal Inc. (“**Ridley**”) by reason of Coalspur’s disclaimer of, and election not to perform, the Ridley Agreement constitute a pre-filing, unsecured claim which is stayed, and which may be compromised, within Coalspur’s CCAA proceedings; and
 - (c) such further and other relief as counsel may request and this Honourable Court may grant.

Basis for this claim:

Background

2. Coalspur and Ridley are party to a Terminal Services Agreement, dated January 1, 2018 (as amended by a Settlement and Mutual Release, dated July 1, 2020 and a Letter Agreement, dated February 13, 2021, the “**Ridley Agreement**”). Pursuant to the Ridley Agreement, Ridley provided terminal, cargo storage, and vessel loading services to Coalspur through its bulk handling terminal located at Ridley Island in Prince Rupert, British Columbia (the “**Ridley Terminal**”).
3. On April 26, 2021, Coalspur was granted an Initial Order (the “**Initial Order**”) pursuant to the CCAA which, among other things, declared that Coalspur was a company to which the CCAA applied, granted a stay of proceedings up to and including May 6, 2021, and appointed FTI Consulting Canada Inc. as Monitor (the “**Monitor**”) in these proceedings.
4. The Initial Order was amended and restated, and an Amended and Restated Initial Order was granted, by this Honourable Court on May 6, 2021.

5. On May 7, 2021, Coalspur served Ridley with a Notice by Debtor Company to Disclaim or Resiliate an Agreement (Form 4) (the “**Disclaimer Notice**”) advising of its intention to disclaim the Ridley Agreement in accordance with section 32(1) of the CCAA. The Monitor approved Coalspur’s disclaimer of the Ridley Agreement.
6. In addition, on May 7, 2021, Coalspur elected to stop performing the Ridley Agreement and instead made arrangements to ship cargo from the Vista Coal Mine Project (a coal mine owned by Coalspur approximately 10 kilometers east of Hinton, Alberta) to a third party export terminal.
7. In response to Coalspur’s election to stop performing the Ridley Agreement, on May 7, 2021, Ridley’s counsel advised Coalspur’s counsel by letter that, among other things:
 - (a) Coalspur sought and obtained the benefit of a stay of proceedings of its agreements, including the Ridley Agreement, and that, as a result, Coalspur has a corresponding obligation to honour its agreements unless and until they are disclaimed in accordance with the CCAA; and
 - (b) Coalspur’s election to stop performing the Ridley Agreement constituted a post-filing breach of contract.
8. By letter dated May 9, 2021, Coalspur’s counsel directed Ridley’s counsel to this Honourable Court’s decision in *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 809, leave to appeal dismissed, 2021 ABCA 85, and advised that, in light of such jurisprudence, Ridley could not seriously contend that Coalspur’s failure to perform the Ridley Agreement was a “post-filing breach of contract” or that Coalspur had an obligation to perform the Ridley Agreement unless and until it was disclaimed under the CCAA.
9. On May 10, 2021, Ridley’s counsel asserted that Coalspur’s election to cease performing the Ridley Contract constituted “willful and commercially immoral conduct” which was “simply contemptuous of the CCAA process” and advised that Ridley may “seek orders that would have the effect of deterring such contemptuous conduct by CCAA debtors in the future, including by way of aggravated or punitive damages.”
10. On May 21, 2021, Ridley filed an Application (the “**Ridley Application**”) seeking a

declaration that the Ridley Agreement is not to be disclaimed or resiliated. Notwithstanding the serious allegations levied by Ridley against Coalspur in its letter of May 10, 2021, and notwithstanding that Ridley asserts in its application materials that Coalspur is acting in bad faith, Ridley has not sought any relief with respect to Coalspur's obligation to continue performing the Ridley Agreement, or seeking to compel same.

11. Coalspur accordingly seeks the above-noted declarations in response to the serious allegations being made against it and in order to progress these CCAA proceedings in an efficient and expeditious manner.
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Affidavit or other evidence to be used in support of this application:

13. All evidence filed, or to be filed, in respect of the Ridley Application, including:
 - (a) the Affidavit of Robert Booker, sworn May 21, 2021;
 - (b) the Affidavit of Cordell Dixon, sworn May 21, 2021;
 - (c) responding evidence, if any, which may be filed by Coalspur;
 - (d) cross-examination transcripts on the foregoing, if any; and
 - (e) Monitor's Report, to be filed.
14. All evidence filed to date in Coalspur's CCAA proceedings, including:
 - (a) the Affidavit of Michael Beyer, sworn April 19, 2021;
 - (b) the Supplemental Affidavit of Michael Beyer, sworn April 23, 2021;
 - (c) the Second Affidavit of Michael Beyer, sworn April 30, 2021; and
 - (d) the Pre-Filing and First Reports of the Monitor, filed.
15. Such further and other evidence as counsel may advise and this Honourable Court may

permit.

Applicable Acts and regulations:

16. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
17. *Judicature Act*, RSA 2000, c J-2.
18. *Rules of Court*, Alta Reg 124/2010.
19. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp:



COURT FILE NUMBER 2101-05019
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JUDICIAL CENTRE CALGARY
APPLICANTS: 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**
CONTACT INFORMATION **OSLER, HOSKIN & HARCOURT LLP**
OF PARTY FILING THIS Barristers & Solicitors
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Email: RVandemosselaer@osler.com / EPaplawski@osler.com
File Number: 1217428

DATE ON WHICH ORDER June 16, 2021
WAS PRONOUNCED:
NAME OF JUDGE WHO The Honourable Madam Justice B.E.C. Romaine
MADE THIS ORDER:
LOCATION OF HEARING: Calgary, Alberta

UPON the application of **COALSPUR MINES (OPERATIONS) LTD.** (the "**Applicant**"); **AND UPON** having read the Affidavit of Robert Booker, sworn May 21, 2021, the Affidavit of Cordell Dixon, sworn May 21, 2021, the Affidavit of Michael Beyer, sworn April 19, 2021, the Supplemental Affidavit of Michael Beyer, sworn April 23, 2021, the Second Affidavit of Michael Beyer, sworn April 30, 2021, and ●; **AND UPON** having read the Pre-Filing Report

of the Proposed Monitor, filed April 27, 2021, the First Report of the Monitor, filed May 3, 2021, and the Second Report of the Monitor, filed June ●, 2021; **AND UPON** hearing from counsel for the Applicant, counsel for Ridley Terminals Inc. (“**Ridley**”), counsel for the Monitor, and any other counsel present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

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.

RIDLEY AGREEMENT

2. Coalspur is not compelled to perform the Terminal Services Agreement between Coalspur and Ridley, dated January 1, 2018 (as amended by a Settlement and Mutual Release, dated July 1, 2020 and a Letter Agreement, dated February 13, 2021, the “**Ridley Agreement**”) or remedy any existing defaults under the Ridley Agreement until the Ridley Agreement is disclaimed in accordance with the provisions of the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”);
3. Any amounts owing by Coalspur to Ridley in relation to Coalspur’s disclaimer of, and election to no longer perform, the Ridley Agreement constitute a pre-filing, unsecured claim which is stayed, and which may be compromised, within Coalspur’s CCAA proceedings

SERVICE OF ORDER

4. 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.