

COURT FILE NO. 25-2965622/ B201 965622
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C B-3, AS AMENDED

C91001

AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MANTLE MATERIALS GROUP, LTD.

APPLICANT MANTLE MATERIALS GROUP, LTD.

DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT
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File No. A171561
Attention: Tom Cumming / Sam Gabor / Stephen Kroeger

NOTICE TO THE RESPONDENTS

This application is made against you.

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

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

Date: September 22, 2023
Time: 2:00 p.m. MST
Where: By Webex (see Webex details at **Schedule “B”**)
Before Whom: The Honourable Justice M. J. Lema in Commercial
Chambers

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

Remedy claimed or sought:

1. The applicant, Mantle Materials Group, Ltd. (the “**Company**” or “**Mantle**”), in connection with the proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”, and such proceedings, the “**Proposal Proceedings**”) applies for an Order seeking, *inter alia*, the following relief, which Order is substantially in the form attached hereto as **Schedule “A”**:
 - (a) abridging the time for service of notice of this Application, deeming service of notice of this Application to be good and sufficient, and declaring that there is no other person who ought to have been served with notice of this Application;
 - (b) extending the 45 day period within which the Proposal Trustee is required to file a proposal with the official receiver under sections 50.4(8) and 50.4(9) of the BIA by an additional 45 days, ending **November 13, 2023** (such period, as extended from time to time under section 50.4(9) of the *BIA*, being the “**Stay Period**”, and the date on which the Stay Period expires being the “**Expiry Date**”); and
 - (c) such further and other relief as Mantle may request and this Honourable Court may grant.

Grounds for making this application:

Background

2. Mantle, an Alberta corporation, is a wholly owned subsidiary of RLF Canada Holdings Limited (“**RLF Holdco**”), a Colorado corporation, which in turn is a wholly owned subsidiary of Resource Land Fund V, LP (“**RLF LP**”), a Delaware limited partnership, which is a fund managed by RLH LLP.
3. Mantle extracts, processes and sells aggregate and gravel extracted from various pits (collectively, the “**Aggregate Pits**”) operated by Mantle in Alberta pursuant to surface material leases issued by the Crown in right of Alberta and royalty agreements with private land owners.

4. Mantle acquired the business and Aggregate Pits from JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**”) on May 1, 2021. JMB and 216 had also been subsidiaries of RLF LP.
5. Prior to its acquisition of the Aggregate Pits, Alberta Environment and Protected Areas (the “**AEPA**”) had issued environmental protection orders requiring that certain Aggregate Pits be reclaimed (the “**EPOs**”). With respect to Aggregate Pits which were being operated by Mantle (the “**Active Aggregate Pits**”), Mantle performed reclamation work as it was extracting and processing Aggregate. With respect to Aggregate Pits which were not being operated (the “**Inactive Aggregate Pits**”), Mantle carried out reclamation work in accordance with the EPOs.
6. However, in the two years following its acquisition of the business and Aggregate Pits, Mantle was unable to generate sufficient sales and working capital to be financially viable. Therefore, management and the directors of Mantle determined that the best course of action for Mantle was to commence proceedings under Division I of Part IV of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) to permit Mantle to complete certain profitable aggregate supply contracts, liquidate its property in a commercially reasonable manner so as to maximize the proceeds, and allow it to perform its environmental reclamation obligations.
7. On July 14 2023, Mantle filed a notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4(1) of the *BIA* (such proceedings, the “**Proposal Proceedings**”) naming FTI as the Proposal Trustee. RLF Canada Lender Limited (“**RLF Lender**”), an affiliate of Mantle’s parent RLF Holdco, agreed to provide interim financing to Mantle under section 50.6 of the *BIA* in order to provide Mantle with working capital during the Proposal Proceedings and to fund its environmental reclamation work.
8. As a result of the filing of the NOI, all proceedings against Mantle and its property were automatically stayed for an initial period of thirty (30) days.
9. Mantle applied for an Order, scheduled to be heard on August 8, 2023, which would, *inter alia*, extend the Stay Period, create an administration charge in the maximum amount of

\$425,000 in favour of the Proposal Trustee and its counsel and counsel to Mantle (the “**Administration Charge**”), approve an interim facility commitment letter dated August 10, 2023 under which RLF Canada Lender Limited agreed to provide an interim facility in favour of Mantle in the maximum principal amount of \$2,200,000 (the “**Interim Financing**”), create a charge securing the interim facility (the “**Interim Financing Charge**”), create a charge in the maximum amount of \$150,000 to secure Mantle’s obligation to indemnify its directors and officers for obligations they may incur subsequent to the filing of the NOI (the “**D&O Charge**”, and together with the Administration Charge and Interim Financing Charge, the “**BIA Charges**”), order that the Charges rank in priority to any other security interest or encumbrance and, as between the BIA Charges, order that the Administration Charge ranks first in priority, the Interim Financing Charge ranks second in priority and the D&O Charge ranks third in priority.

10. On August 8, 2023, on the eve of the hearing of the application, Travelers Capital Corp. (“**Travelers**”), which provided financing in October of 2021 for the acquisition by Mantle of certain equipment utilized in its gravel and aggregate extraction business, filed an affidavit and brief opposing certain of the relief being requested, and the hearing of the full application was adjourned by the Honourable Justice Campbell. However, at that hearing, she pronounced an Order extending the Stay Period to August 18, 2023.
11. On August 15, 2023 (the “**August 15 Order**”), the Honourable Justice Feasby extended the Stay Period to September 27, 2023, granted the BIA Charges, approved the Interim Financing, granted priority to the BIA Charges as against all other security and encumbrances, other than the security in favour of Travelers, in respect of which he reserved his determination, and restated in the Order the stay of proceedings provided for in section 69(1) of the BIA, the prohibitions against terminating, accelerating payment under or forfeiting any agreement under section 65.1(4) of the BIA, and providing certain associated relief.
12. Pursuant to reasons for decision dated August 28, 2023 (the “**Reasons for Decision**”), the Honourable Justice Feasby determined that the BIA Charges should rank in priority to all

other security interests, trusts, liens, charges, deemed trusts, encumbrances and the claims of secured creditors, including the security of Travelers.

13. As of September 15, 2023, a draft Order amending the August 15 Order to reflect the Reasons for Decision has been submitted to this Honourable Court but has not been signed.

Extension of the Stay Period

14. Since the August 15 Order, Mantle has been performing the contracts for sale and supply of gravel and other aggregates to its customers, carrying out reclamation of the inactive gravel and aggregate pits in accordance with the EPOs, working with the Proposal Trustee to enable Mantle to market and sell its equipment and active gravel and aggregate pits and dealt with issues which have arisen in the Proposal Proceedings. In particular, working with the Proposal Trustee, Mantle carried out the following activities:

- (a) Mantle has been selling Aggregate pursuant to supply and sale contracts with customers where those sales can be completed on a profitable basis;
- (b) Mantle has continued to collect its accounts receivable and made arrangements with one of its lenders for the remittance of accounts receivable collected by that lender after the date the NOI was filed;
- (c) Mantle used the working capital provided under the Interim Facility to pay employees, contractors, landlords, lessors, insurers and other parties for obligations incurred following the filing of the NOI, and to carry out Reclamation Work;
- (d) Mantel has been performing or engaging a contractor to perform Reclamation Work in consultation with the AEPA;
- (e) Mantle has been working with the Proposal Trustee to prepare marketing materials and information to permit it to market and sell the Active Aggregate Pits;
- (f) Mantle is in discussion with the Proposal Trustee and various equipment auctioneers to determine the best way to market and sell its equipment;

- (g) Mantle is developing a proposal that would permit it to complete the Reclamation Work and thereafter distribute the proceeds of sale of its assets to its creditors after satisfying its environmental reclamation obligations and the payment of its restructuring costs.
15. Mantle requires an extension of the Stay Period to continue the restructuring of its businesses and to work towards making a viable proposal to its creditors. The extension of the Stay Period is appropriate for, *inter alia*, the following reasons:
- (a) Mantle has acted and continues to act in good faith and with due diligence;
 - (b) no creditor will be materially prejudiced by the requested extension of the Stay Period;
 - (c) extension of the Stay Period is necessary to allow Mantle sufficient time and opportunity to satisfy its Environmental Reclamation Obligations and in consultation with its secured creditors preserve, sell its property in a commercially reasonable manner, and develop a proposal.
16. Mantle has sufficient cash flow to operate during the extended Stay Period being applied for.
17. The extension of the stay strikes a balance between the public's interest in ensuring Environmental Reclamation Obligations are satisfied in a timely and efficient manner and maximizing the value of Mantle's estate for the benefit of all stakeholders including creditors.
18. The Proposal Trustee supports the requested extension of the Stay Period.

Material or evidence to be relied on:

- 19. The Affidavit of Byron Levkulich sworn September 15, 2023, to be filed;
- 20. Bench Brief, to be filed;
- 21. The second report of the Proposal Trustee, to be filed; and

22. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

23. Rules 1.2, 1.3, 3.2(2)(d), 3.8, 6.3(1), 6.9, 11.27 and 13.5 of the Alberta *Rules of Court*, Alta Reg 124/2010;
24. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
25. 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:

26. None.

How the application is proposed to be heard or considered:

27. Before the presiding Justice in Commercial Chambers via Webex.

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 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"

Draft Order

Clerk's Stamp

COURT FILE NO. 25-2965622

COURT COURT OF KING'S BENCH OF ALBERTA
(IN BANKRUPTCY & INSOLVENCY)

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MANTLE MATERIALS GROUP, LTD.

DOCUMENT **ORDER (Stay Extension)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Fax: 403.263.9193

Email: tom.cumming@gowlingwlg.com /
stephen.kroeger@gowlingwlg.com

File No.: A171561

DATE ON WHICH ORDER WAS PRONOUNCED: September 22, 202

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice M. J. Lema

UPON THE APPLICATION of Mantle Materials Group, Ltd. (“**Mantle**”), filed August 2, 2023; **AND UPON** reading Affidavit of NTD, sworn NTD, 2023 (the “**Affidavit**”); **AND UPON** being advised that on July 14, 2023, Mantle filed a notice of intention to make a proposal (the “**NOI**”) under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC, c B-3 (as amended, the “**BIA**”); **AND UPON** reading the Report of FTI Consulting Canada Inc. dated _____, 2023 in its capacity as proposal trustee of Mantle (in such capacity, the “**Proposal Trustee**”); **AND UPON** hearing submissions by counsel for Mantle, counsel for the Proposal Trustee and any other counsel or other interested parties present,

IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other than those persons served is entitled to service of the notice of application.

EXTENSION OF TIME TO FILE A PROPOSAL

2. The time within which Mantle is required to file a proposal to its creditors with the Official Receiver, under section 50.4 of the *BIA* is hereby extended to November 13, 2023.
3. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

J.C.Q.B.A

SCHEDULE “B”

WEBEX DETAILS

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,