

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-09-027076-173

N°: 500-11-048114-157

COURT OF APPEAL

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

THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS, having its head office at 255
Albert Street, 14th Floor, in the city of
Ottawa, province of Ontario K1A 0H2

APPELLANT – Mis en cause

v.

FTI CONSULTING CANADA INC., a
corporation legally constituted, having its
head office at the TD Waterhouse Tower, 79
Wellington Street West, Suite 2010, in the
city of Toronto, province of Ontario M5K 1G8

RESPONDENT – Monitor

-and-

BLOOM LAKE GENERAL PARTNER
LIMITED, corporation legally constituted,
formerly located at 1155 Robert-Bourassa
Boulevard, Suite 508, in the City of Montréal,
province of Québec H3B 3A7

QUINTO MINING CORPORATION,
corporation legally constituted, formerly
located at 1155 Robert-Bourassa Boulevard,
Suite 508, in the City of Montréal, province of
Québec H3B 3A7

8568391 CANADA LIMITED, corporation
legally constituted, formerly located at
1 Place Ville Marie, Suite 3000, in the City of
Montréal, province of Québec H3B 4N8

CLIFFS QUEBEC IRON MINING ULC,
corporation legally constituted, located at
2600-595 St Burrard, in the city of
Vancouver, province of British Columbia V7X
1L3

WABUSH IRON CO. LIMITED, corporation
legally constituted, located at 200 Public

Square, Suite 3300, Cleveland, Ohio, United States 44114

WABUSH RESOURCES INC., corporation legally constituted, located at 199 Bay Street, Suite 4000, in the city of Toronto, province of Ontario M5L 1A9

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, corporation legally constituted, formerly located at 1155 Robert-Bourassa Boulevard, Suite 508, in the City of Montréal, province of Québec H3B 3A7

BLOOM LAKE RAILWAY COMPANY LIMITED, corporation legally constituted, located at 235 Water Street, Suite 1100 , in the city of St. John's, province of Newfoundland & Labrador A1C 1B6

WABUSH MINES, corporation legally constituted, located at 199 Bay Street, Suite 4000, in the city of Toronto, province of Ontario M5L 1A9

ARNAUD RAILWAY COMPANY, corporation legally constituted, formerly located at 1505 de la Pointe Noire Road, in the city of Sept-Îles, province of Québec G4R 4L4

WABUSH LAKE RAILWAY COMPANY LIMITED, corporation legally constituted, located at 235 Water Street, Suite 1100 , in the city of St. John's, province of Newfoundland & Labrador A1C 1B6

MISES EN CAUSE - Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS, having its head office at the Confederation Building, at 100 Prince Philip Drive, West Block, 2nd Floor, in the city of St. John's, in the province of Newfoundland & Labrador A1B 4J6

-and-

MICHAEL KEEPER, residing and domiciled at 1049 Fitzsimmons Drive, in the city of Brockville, province of Ontario K6V 0A1

TERENCE WATT, residing and domiciled at 1001 – 6 Willow Street, in the city of Waterloo, province of Ontario N2J 4S3

DAMIEN LEBEL, , residing and domiciled at 14 de Pegase Street, in the city of Bonsecours, province of Québec J0E 1H0

NEIL JOHNSON, residing and domiciles at 72 Whiteway Drive, in the city of Wabush, province of Newfoundland & Labrador A0R 1B0

-and-

UNITED STEEL WORKERS, LOCALS 6254 AND 6285, corporation legally constituted, having its head office at 234 Eglinton Avenue East, 8th Floor, in the city of Toronto, province of Ontario M4P 1K7

-and-

RETRAITE QUÉBEC, having its head office at 2600, Laurier Boulevard, Suite 501 In the city of Québec, province of Québec G1V 4T3

-and-

MORNEAU SHEPELL LTD., IN ITS CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR, having its head office at 7071 Bayers Road, suite 3007, in the city of Halifax, province of Nova Scotia B3L 2C2

-and-

VILLE DE SEPT-ÎLES, municipal corporation legally constituted, having its head office at 546 De Quen Avenue, in the city of Sept-Îles, province of Québec G4R 2R4

MIS EN CAUSE - Mis en cause

AMENDED NOTICE OF APPEAL
(S. 206 to 208 and 352 C.C.P.)

Appellant

Dated January 4, 2018

1. The appellant appeals from a judgment of the Superior Court (Commercial Division) rendered on September 11 2017, by the Honourable Stephen W. Hamilton, District of Montreal, rendered that :

"GRANTS the Motion by the Monitor for Directions with respect to Pensions Claims;

DECLARES that the trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

DECLARES that the employee contributions and the normal cost payments are protected to the extent provided for by sections 6(6) and 37(6) of the CCAA

THE WHOLE WITHOUT COSTS"

2. The date of the notice of judgment is September 11 2017;
3. The duration of the trial was of 2 days;
4. The appellant file with this notice of appeal a copy of the judgment in first instance in Schedule 1;
5. The value of the subject matter of the dispute is \$8 880 469.00;
6. The trial judge erred in his judgment for the following reasons :
 - a) The CCAA Judge erred in law when he interpreted the intention of the legislator in concluding that the Deem Trust created by section 8(2) of the PBSA had no application in a liquidation carried out under the CCAA, even if said liquidation does not lead to any recovery plan for the creditors;
 - b) The CCAA Judge confused the intention of the legislator in the context of corporate restricting or reorganisation with the intent of the legislator in the context of liquidation;
 - c) The CCAA Judge also erred in concluding that the beneficiaries of the pension plan do not have any protection other than normal payments in a CCAA case without even being able to vote on the matter;

- d) The CCAA Judge erroneously applied the principles of statutory interpretation, as his conclusion in the present case rendered two federal statutes irreconcilable;
- e) The CCAA Judge, in holding that bankruptcy and liquidation are elements that trigger the Deem Trust that does not apply in matters of the CCAA or proposals, creates a different regime for bankruptcy that contravenes the very wording of section 8(2) of the PBSA;
- f) The CCAA Judge applied the interpretation criteria of the Deem Trust to the Crown to the Deem Trust of the pension plan without taking into account:
 - The broad and liberal criteria that needs to be applied in matters of the protection of pension plans (Bushau and Smith);
 - The elusive nature of the assets that make up the pension plan;
 - The intention of legislator to provide increased protection to pension plans; the beneficiaries being the ones able to renounce this protection, under section 6(6) of the CCAA;
 - Section 37(1) of the CCAA;
- g) The CCAA Judge failed to rule on whether normal payments should be made for the period from December 16 to 31, 2015;

7. The appellant will ask the Court of Appeal to :

- a) **GRANT** the appeal;
- b) **OVERTURN** in part the judgment rendered in first instance;
- c) **REJECT** in part the request for directives of the Monitor;
- d) **DECLARE** that, in the context of liquidation under the CCAA, the deemed trust under section 8(2) of the PBSA applies (...);
- e) **DECLARE** that the product of the sale of the debtor companies' assets, up to the amount that is due to the pension plans and protected by the deemed trust

created by s 8(2) of the Pension Benefits Standards Act, 1985, is excluded from the debtor's assets;

f) **DECLARE** that the amounts owed must be paid to the pension plans unless the beneficiaries of the plans accept lesser amounts as part of a plan submitted to them;

g) **DECLARE** that normal payments are due up to December 31, 2015;

(...)

NOTICE of this Amended Notice of Appeal is given to:

(...)

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and

(...)

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Counsel for the MISES EN CAUSE Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Quebec Iron Mining ULC, Wabush Iron Co. Limited, Wabush Resources inc., The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wabush Mines, Arnaud Railway Company, Wabush Lake Railway Company Limited (...)

and

(...)

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and

(...)

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and

(...)

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and

(...)

Mtre Louis Robillard

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RETRAITE QUÉBEC

Direction des Affaires juridiques

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Counsel for the MIS EN CAUSE Retraite Québec (...)

and

(...)

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and

(...)

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Counsel for the MIS EN CAUSE Ville de Sept-Îles (...)

(...)

MONTREAL, January 4, 2018


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NOTICE FOLLOWING ARTICLE 26 OF THE CIVIL PRACTICE REGULATION

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal (Article 358, para. 2 C.C.P.).

If a party fails to file a representation by counsel (*or a non-representation statement*), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine (*Article 30 Civil Practice Regulation*).

The parties shall notify their proceedings (*including briefs and memoranda*) to the appellant and to the other parties who have filed a representation (*or non-representation statement*) (*Article 25, para. 1 Civil Practice Regulation*).

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTRÉAL

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ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

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APPELLANT- Mis en cause

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RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER LTD ET AL.

MISES EN CAUSE – Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS ET AL.

MIS EN CAUSE - Mis en cause

AMENDED NOTICE OF APPEAL
(S. 206 to 208 and 352 C.C.P.)

Appellant

Dated January 4, 2018

ORIGINAL

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The parties shall notify their proceedings, including briefs and memoranda, to the appellant and to the other parties who have produced a representation or non-representation statement. (Article 25, al. 1 of the Civil Practice Regulation).

If a party fails to produce a representation or a non-representation statement, it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. (Article 30 of the Civil Practice Regulation).