

2003 01T No. 3807

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CLIFFS MINING COMPANY in its capacity as
Managing Agent of WABUSH MINES PLAINTIFF

AND:

ROYAL BANK OF CANADA DEFENDANT

BETWEEN:

ROYAL BANK OF CANADA PLAINTIFF
BY COUNTERCLAIM

AND:

CLIFFS MINING COMPANY in its capacity as
Managing Agent of WABUSH MINES DEFENDANT
BY COUNTERCLAIM

AFFIDAVIT

I, Jason Veloso, of the City of Cleveland, in the State of Ohio, make oath and say as follows:

1. That I am employed as Senior Attorney, Cliffs Natural Resources Inc. ("Cliffs Natural Resources"). The Plaintiff, Cliffs Mining Company in its capacity as Managing Agent of Wabush Mines ("Cliffs Mining") is a wholly-owned subsidiary of Cliffs Natural Resources. Cliffs Mining does not have any in-house legal counsel, as such all in-house legal services that are required by Cliffs Mining are provided to it by Cliffs Natural Resources including support for this action. I have been involved with providing in-house legal services to Cliffs Mining since September, 2010 and as such have personal knowledge of the facts and things deposed to unless otherwise stated.

The Master Lease Agreement

2. That it is my understanding and belief from reviewing the file that on December 17, 1996 the Plaintiff, Cliffs Mining Company in its capacity as Managing Agent of Wabush Mines ("Cliffs Mining") and the Defendant Royal Bank of Canada ("RBC") entered into a lease agreement (the "Master Lease Agreement") pursuant to which Cliffs Mining

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would lease certain equipment from RBC. A copy of the Master Lease Agreement is attached hereto as Schedule "A".

3. Cliffs Mining, as was communicated to RBC, is merely the Managing Agent for Wabush Mines which, at the relevant time, was a joint venture between Wabush Iron Co. Limited ("Wabush Iron"), Stelco Inc. ("Stelco") and Dofasco Inc. ("Dofasco"). The Master Lease Agreement specifically states that it is between RBC and:

"Cliffs Mining Company, the Managing Agent, acting only for and on behalf of Wabush Mines (an unincorporated joint venture of Wabush Iron Co., Limited, Stelco Inc. and Dofasco Inc.) having an office at 1100 Superior Avenue, Cleveland, Ohio 44114-2589, which declares to be duly authorized in virtue of a Management Agreement (copy of which is attached) to act on behalf of Wabush Mines and bind each of Wabush Iron Co., Limited, Stelco Inc. and Dofasco Inc. in accordance with their respective liability stated in paragraph 53.1 hereof;"

4. The Management Agreement referred to is dated as of January 1, 1967 and is between the predecessors of Cliffs Mining, Wabush Iron, Stelco and Dofasco. A copy of the Management Agreement is attached hereto as Schedule "B".
5. Paragraph 53.1 of the Master Lease Agreement states:

"53. Liability of each Joint Venturer

53.1 The liability of each Joint Venturer in respect of any Obligation in the Lease and Leasing Schedules shall be as follows:

- Wabush Iron Co. Limited: 37.87% thereof
- Stelco Inc.: 37.87% thereof
- Dofasco Inc.: 24.26% thereof."

6. Pursuant to Lease No. 08-73566 and Lease No. 08-74187, respectively, Wabush Mines agreed to lease from RBC two Bucyrus Erie Electric Shovels, Model No. 295-B, Serial Nos. 136917 and 139500 (collectively the "Equipment" and individually a "Shovel"). The term of lease under both Lease No. 08-73566 and Lease No. 08-74187 was for 60 months commencing July 1, 1998 with a termination date on June 30, 2003 (the "Lease Term"). Copies of Lease No. 08-73566 and Lease No. 08-74187 are attached hereto as Schedule "C".
7. Pursuant to section 25 of the Master Lease Agreement, Wabush Mines was granted an option to purchase whatever title RBC had in the Equipment. Such option was to be exercised before the expiry of the Lease Term as long as there was no Event of Default

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pursuant to the Master Lease Agreement (Section 25.1). If Wabush Mines wished to exercise the option to purchase it was required to provide written notice at least 30 days prior to the expiry of the Lease Term, i.e. by May 31, 2003 (Section 25.2). Pursuant to Section 25.4 of the Master Lease Agreement:

“Upon the exercise of such option, there shall be a binding agreement for the sale and purchase of the Equipment and/or assignment of license rights in the Licensed Software described in the said notice on the terms and conditions provided herein. The Purchase Price shall be paid to Lessor at the time of the conclusion of such sale.” [emphasis added]

Purchase of the Equipment

8. Cliffs Mining provided written notice of Wabush Mines' intention to exercise the option to purchase the Equipment pursuant to Section 25.2 of the Master Lease Agreement on May 27, 2003 (the "Option") with an attached appraised value of US\$200,000 per Shovel prepared by Dom-Ex Inc. ("Domex"). I am advised by Joyce Waschura ("Waschura") and verily believe that on May 27, 2003 she sent a letter on behalf of Cliffs Mining as Managing Agent to Stéphane Chaput of RBC exercising the Option. A copy of Waschura's May 27, 2003 letter is attached hereto as Schedule "D". At the time Cliffs Mining delivered the Option, RBC had not provided any written notice to Cliffs Mining that there was any default of any Obligation as defined under the Master Lease Agreement.
9. Both Lease No. 08-73566 and Lease No. 08-74187 provide that the Purchase Price for the Equipment "will be the lesser of the Fair Market Value and the Fair Market Value Cap". The Fair Market Value Cap was defined as \$1,006,621.60 for each Shovel for a total of \$2,013,324.20. Section 1.1(ac) of the Master Lease Agreement provides that:

“Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell. This amount will be determined by agreement between the Lessor and Lessee. If a mutual agreement cannot be reached, two independent appraisers will be engaged, costs to be shared equally. The average of the two appraisals will be considered fair market value.”
10. It is my understanding and belief that Cliffs Mining and RBC could not agree on Fair Market Value. Accordingly, in July 2003 they jointly retained two independent appraisers. It was agreed between Cliffs Mining and RBC that they would each choose



one of the two independent appraisers to appraise the Equipment. Because the Lease Term expired on June 30, 2003, Wabush Mines and RBC entered into a letter agreement dated July 11, 2003 (the "Letter Agreement"). Both parties executed the Letter Agreement. A copy of the Letter Agreement is attached hereto as Schedule "E".

11. The Letter Agreement provides, *inter alia*, as follows:

"Confirming our conversation today, it is understood and agreed that notwithstanding the June 30, 2003 lease termination date, Wabush Mines will continue making monthly rental payments and such payments will be credited against the purchase price for the Equipment captioned above. Please sign below and return one copy to acknowledge this agreement."

12. Cliffs Mining chose Hunyady Appraisal Services ("Hunyady"), which delivered its appraisal on August 29, 2003, a copy of which is attached hereto as Schedule "F". Hunyady appraised the Equipment at a value of \$140,280.00 (lower than did Domex).

13. RBC chose High Tower Construction Services, LLC ("High Tower"), which delivered its appraisal on August 18, 2003, a copy of which is attached hereto as Schedule "G". High Tower appraised the Equipment at a value of \$770,000.00 (higher than did Domex). In its report High Tower indicates that the two Shovels are in "fair" condition. Nowhere in its report does High Tower state that the Shovels are in disrepair or that any lack of repair has impacted on the Fair Market Value of the Shovels.

14. Pursuant to the Master Lease Agreement, the average of these two appraisals is \$455,140.00, which is the Fair Market Value and therefore the Purchase Price of the Equipment.

15. As of September 15, 2003, Wabush Mines had made payments pursuant to the Letter Agreement in the aggregate amount of \$347,120.00. Pursuant to the Letter Agreement, this amount is to be deducted from the Purchase Price of \$455,140.00 to leave a total amount owing to RBC for the Equipment of \$108,020.00.

The Purported Notice of Breach

16. It is my understanding and belief that after the Option had been exercised, the Lease Term had expired, the Letter Agreement had been executed, and the appraisal reports by Hunyady and High Tower had been received, RBC purported to provide written notice on September 4, 2003 that there had been an Event of Default by Wabush Mines (and not by

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Cliffs Mining) under the Master Lease Agreement. A copy of RBC's letter dated September 4, 2003 is attached hereto as Schedule "H". It is Cliffs Mining's position that the delivery of such purported notice was only done by RBC because the Fair Market Value of the Equipment of \$455,140.00 was significantly below the Fair Market Value Cap of \$2,013,324.20.

Payment of the Purchase Price

17. Cliffs Mining's position regarding the amount owed to RBC for the purchase of the Shovels pursuant to the Master Lease Agreement was clearly set out in a letter from Cliffs Mining to RBC sent on September 15, 2003, a copy of which is attached hereto as Schedule "I". In his letter Mr. Gallagher (of Cliffs Mining) enclosed a cheque to RBC for \$108,020.00 which was the balance of the purchase owed for the Shovels after deduction of the post-June 30, 2003 lease payments. It is my understanding and belief that RBC refused to cash this cheque.
18. Subsequently, by letter on September 22, 2003 Cliffs Mining delivered to RBC a second cheque in the amount of \$108,020.00, a copy of which is attached hereto as Schedule "J". One of the attachments to this letter was a service report prepared by Bucyrus Canada Limited, the manufacturer of the Shovels. The conclusion of this report is: "Based on these observations, it can be concluded that Wabush Mines performs maintenance on the 295B shovels acceptable to Bucyrus Canada Limited and agreeable with industry standards".
19. On September 24, 2003 RBC responded by letter and proposed that RBC cash that cheque since it was agreed this amount, at least, was owed to RBC. A copy of RBC's letter of September 24, 2003 is attached hereto as Schedule "K".
20. Cliffs Mining confirmed by letter on October 1, 2003 that Cliffs Mining did not object to RBC's proposal that "we cash said check [sic] and apply it against the purchase price for the two electric shovels, without prejudice to our respective right as to the final determination of said purchase price." A copy of the October 1, 2003 letter is attached as Schedule "L". It is my understanding and belief that, for reasons not known to me, RBC failed to cash this cheque and it became stale dated.
21. RBC now claims in this action that since there was an Event of Default for failure to repair there was no right to purchase the Shovels. If there was a right to purchase, RBC

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claims the purchase price for the Shovels was the Fair Value Market Cap of \$2,013,324.20. In its pleading RBC does acknowledge that it has received lease payments subsequent to June 30, 2003 in the amount of \$347,120.00 which are to be credited against the purchase price of the Shovels. RBC asserts that the amount of the purchase price owed to RBC is \$1,666,204.20. RBC also claims it is entitled to interest at the rate of 18% per annum compounded monthly pursuant to Section 30 of the Master Lease Agreement.

22. RBC does not claim these amounts as against Wabush Iron, Stelco or Dofasco; but rather claims such amounts as against Cliffs Mining in its personal capacity.

23. To the best of my knowledge and belief, RBC has never asserted a claim as against Wabush Iron, Stelco. and/or Dofasco for any of the amounts it now claims as against Cliffs Mining which was only acting in its capacity as Managing Agent on behalf of the Joint Venturers as set out in the Master Lease Agreement.

SWORN TO before me at the City of Cleveland, in the State of Ohio, this 7th day of May, 2014

Joan M. Spirnak

Jason Veloso
_____ JASON VELOSO

JOAN M. SPIRNAK, Notary Public
State of Ohio, Medina County
Commission Expires Aug. 29, 2015

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