

CANADA

COURT OF APPEAL

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

C.A.:

S.C.: 500-11-048114-157

IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF:

CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED, a legal person with offices at 500 Columbus Drive, P.O. Box 12400, St. John's, NL, A1B 4K7

APPELLANT – Mise-en-cause

v.

BLOOM LAKE GENERAL PARTNER LIMITED, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

QUINTO MINING CORPORATION, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

CLIFFS QUÉBEC IRON MINING ULC, a legal person with offices at 2600-595 Burrard Street, Vancouver, BC, V7X 1L3

- and -

WABUSH IRON CO. LIMITED, a legal person with offices at 200 Public Square, Suite 3300, Cleveland, Ohio, United States, 44114

- and -

WABUSH RESOURCES INC., a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

RESPONDENTS – Petitioners

- and -

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

BLOOM LAKE RAILWAY COMPANY LIMITED, a legal person with offices at 508-1155 Robert-Bourassa Boulevard, Montréal, QC, H3B 3A7

- and -

WABUSH MINES, a legal person with offices at 4000-199 Bay Street, Toronto, ON, M5L 1A9

- and -

ARNAUD RAILWAY COMPANY, a legal person with offices at 3000-1 Place Ville-Marie, Montréal, QC, H3B 4N8

- and -

WABUSH LAKE RAILWAY COMPANY LIMITED, a legal person with offices at 235 Water Street, Suite 1100, St. John's, NL, A1C 1B6

- and -

TWIN FALLS POWER CORPORATION, a legal person with offices at 500 Columbus Drive, P.O. Box 12400, St. John's, NL, A1B 4K7

MISES-EN-CAUSE – Mises-en-cause

- and -

FTI CONSULTING CANADA INC., a legal person with offices at 1200 Waterfront Centre, 200 Burrard Street, Vancouver, BC, V6C 3L6

MONITOR

NOTICE OF APPEAL

(Sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "CCA") and Article 352 of the *Code of Civil Procedure*)

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE APPELLANT SUBMITS:

I. INTRODUCTION

1. Churchill Falls (Labrador) Corporation Limited (“**CF(L)Co**” or the “**Appellant**”), hereby gives notice of its intention to appeal the judgment and order rendered on August 12, 2021 (the “**Judgment**”) by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, Commercial Division, District of Montreal (the “**CCAA Judge**”) in court file 500-11-048114-157 (the “**CCAA Proceedings**”) which declares that the Superior Court of Québec (Commercial Division), standing as a CCAA Court, has the jurisdiction to hear and dispose of a petition for the dissolution and liquidation of a solvent corporation that is registered and located in the Province of Newfoundland and Labrador, on the sole and limited basis that two CCAA debtors, Wabush Iron Co. Limited (“**Wabush Iron**”) and Wabush Resources Inc. (“**Wabush Resources**”, together with Wabush Iron, “**Wabush**”), are minority shareholders in this solvent corporation. A copy of the Judgment is attached hereto as Schedule 1.
2. The Judgment states that the Court of Newfoundland and Labrador (the “**NL Court**”) does not have the “*exclusive jurisdiction to hear any motion relating to the dissolution or the liquidation of Twinco pursuant to sections 207 and 214 of the CBCA merely because Twinco’s registered offices is in Newfoundland.*” The facts however extend far beyond a registered office, such that both Twinco Falls Power Corporation (the “**Twinco**”) and its majority shareholders (including the Appellant) have absolutely no ties to Quebec and in this regard, the Judgment makes important errors in law by extending the CCAA Court’s discretionary powers to force solvent third party corporations to liquidate and litigate matters in a Quebec Court, despite the clear provisions of the *Canada Business Corporations Act* (the “**CBCA**”) and the doctrine of *forum non-conveniens*.

II. OVERVIEW OF THE RELEVANT FACTS

A) The CCAA Proceedings

3. On January 27, 2015, the Superior Court of Quebec issued an Initial Order commencing the CCAA proceedings in respect of Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited.
4. On May 20, 2015, the CCAA Court issued an Initial Order extending the scope of the CCAA Proceedings to Wabush and the Mises-en-cause Wabush Mines, Wabush Lake Railway Company Limited, and Arnaud Railway Company. Pursuant to these initial orders, the Monitor was appointed in respect of the business and financial affairs of all of these CCAA parties, including Wabush.
5. Wabush holds a combined 17.062% equity interest in Twinco. Twinco is otherwise owned (i) 33.3% by CF(L)Co, and (ii) 49.6% by the Iron Ore Company of Canada ("IOC"). Neither CF(L)Co or IOC have registered offices in the Province of Quebec, nor have they been implicated, in any way, in these CCAA Proceedings.

B) The Action Instituted Against the Appellant and Twinco in the CCAA Proceedings

6. On November 16, 2020, in the context of these CCAA Proceedings, Wabush, as a minority shareholder of Twinco, filed the *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* (the "**Dissolution Motion**", attached as **Schedule 2** hereto), on the basis that it was seeking to monetize its last assets (i.e. its shares in Twinco), which, according to Wabush, require that the following orders, amongst others, be granted by the CCAA Court as against Twinco and the Appellant:

- a) an order confirming that the Appellant liable for Twinco's maintenance obligations and environmental liabilities related to a power generating plant (the "**Twinco Plant**") in Newfoundland and Labrador from and after July 1, 1974;
 - b) directing the winding up and dissolution of Twinco pursuant to section 214 and/or section 241(3)(l) of the CBCA and a distribution of: (i) the Twinco Cash (as such term is defined in the Dissolution Motion) net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in the Dissolution Motion, and (ii) the CF(L)Co Reimbursement to Twinco's shareholders, including Wabush, on a *pro rata* basis; and
 - c) in the alternative to (b), directing Twinco and/or CF(L)Co to purchase the shares of Twinco held by Wabush pursuant to section 214(2) and/or section 241(3)(f) of the CBCA for a purchase price equal to the amount of Wabush's *pro rata* share of: (i) the Twinco Cash, and (ii) the CF(L)Co Reimbursement.
7. The Appellant and Twinco contested the jurisdiction relating to the Dissolution Motion on the basis that (i) sections 207 and 214 of the CBCA provide, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation, and accordingly, the liquidation and dissolution of Twinco should occur before the NL Court, and not the Quebec CCAA Court, and (ii) there is no real and substantial connection to Quebec, such that the NL Court is the more appropriate forum to hear the Dissolution Motion. A copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non Conveniens* dated May 17, 2021 is attached as **Schedule 3**. A copy of the Appellant's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021 is attached as **Schedule 4** (the "**Amended Contestation**").

8. In accordance with section 207 of the CBCA, CF(L)Co instituted liquidation proceedings pursuant to section 214(1) of the CBCA before the NL Court (the “**Liquidation Application**”), which application is currently suspended as the question of jurisdiction to hear the Dissolution Motion before the CCAA Court was debated. A copy of the Liquidation Application is attached as **Schedule 5**.
9. Wabush then filed the *Motion for the Expansion of the Monitor’s Powers* (the “**Expansion Motion**”), in which it sought orders (the “**Investigation Order**”) granting the Monitor with unprecedented investigative powers relating to the remedies sought by Wabush against CF(L)Co in the Dissolution Motion. A copy of the Expansion Motion is attached hereto as **Schedule 6**.
10. On July 14, 2021, the CCAA Judge granted the Investigation Order (the “**Investigation Order Judgment**”). The Appellant has already filed an application for leave to appeal from this Investigation Order Judgment. The Investigation Order Judgment is attached hereto as **Schedule 7**.

C) The Judgment

11. Following an approximately 3 hour hearing on August 6, 2021, the CCAA Judge rendered the Judgment on August 12, 2021, relying on sections 11 and 42 of the CCAA, as well as the “single control” model, to determine that the Quebec CCAA Court has jurisdiction, over the NL Court, to oversee the liquidation of Twinco, and in doing so:
 - a) decided that section 42 of the CCAA overrides sections 207 and 214 CBCA, such that even though the CBCA states, in no uncertain terms, that only a court in the territorial jurisdiction of the corporation’s registered office may order the liquidation and dissolution of said corporation, in the context of a CCAA, a Court can use section 42 to order the liquidation of a solvent corporation that is not a CCAA party, debtor or related entity;

- b) held that the “single control” model applies to the case at hand, and that because the CCAA Court sits as a national court, it can oversee “*all proceedings related to a debtor*”.¹ In doing so, it concluded that the court-supervised liquidation of a solvent third party, who is not a debtor in the CCAA Proceedings, still relates to the CCAA debtors, since they are minority shareholders in this corporation and are seeking to monetize their shares therein. This conclusion disregards the interests of the other shareholders of Twinco, who (i) are not debtors, nor even creditors in these CCAA proceedings, (ii) hold approximately 83% of the shares of Twinco, and (iii) are extra-provincially registered corporations in the Province of Newfoundland and Labrador; and
- c) concluded that the CCAA Court should not decline to exercise its jurisdiction based on the doctrine of *forum non conveniens* and article 3135 of the CCQ despite the real and substantial connection with the forum of Newfoundland, and the complete lack of connection with Quebec. In doing so, the CCAA Court relied on the decision rendered by Hamilton J. in *Bloom Lake General Partner Ltd., Re*, 2017 QCCS 284, to conclude that just because a matter is governed by a foreign law, it does not mean it should be referred to another jurisdiction. With respect, the case and issues at hand differ substantially, in that in the 2017 Bloom Lake decision, there were multiple factors which justified proceeding in QC, including that the issue at hand was the substantial liabilities of the CCAA debtors and the potential of the scope of a deemed trust on Quebec assets, in addition to the fact that the question was not whether it should decline jurisdiction, but rather whether it needed assistance from the NL Court.²

¹ Judgment, para. 56.

² [Arrangement relatif à Bloom Lake](#), 2017 QCCS 284, paras. 41 to 73.

12. The Appellant submits that:

- a) the CCAA Judge made a palpable and overriding error of law by concluding that Sections 11 and 42 of the CCAA allow him to override the clear provisions of section 207 and 214 of the CBCA which state that only a court in the territorial jurisdiction of the corporation's registered office may order the liquidation and dissolution of said corporation. In this regard, the Appellant submits that it has not found a single case where the liquidation of a corporation was ordered by a Court outside of its territorial jurisdiction. In this regard, in the *Proposals for a New Business Corporations Law for Canada: Commentary* (1971), often referred to as the "Dickerson Report", it is confirmed that the intent of the legislature in drafting the liquidation provisions, was to ensure that in the context of a liquidation or dissolution, the only Courts with jurisdiction are those where the corporation has its registered office³;
- b) the CCAA Judge committed palpable and overriding errors of law and fact, by assuming jurisdiction over Twinco and the Appellant, despite the fact that pursuant to articles 3134 and 3135 of the CCQ, as well as the factors outlined in *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78⁴, the more appropriate jurisdiction to hear this matter is Newfoundland and Labrador, considering that (i) CF(L)Co and Twinco are not domiciled or residing in Quebec, (ii) CF(L)Co and Twinco do not have establishments in Quebec, (iii) there has been no fault or injury that was suffered in Quebec since Wabush itself is not domiciled in Quebec, and (iv)

³ Robert WV Dickerson, John L Howard & Leon Getz, *Proposals for a New Business Corporations Law for Canada: Commentary*, vol 1 (Ottawa: Information Canada, 1971) at 148: "**442. Generally, under the Draft Act, applications may be made or actions brought in any Canadian superior court—defined in s. 1.02(1)(j). One exception is in Part 17.00 [re: Liquidation and Dissolution] and others are in Parts 14.00 and 18.00 (see ss. 17.01, 14.17(17) and 18.01) where the only courts with jurisdiction will be those in the place where the corporation has its registered office. It seems to us that the convenience of the corporation was paramount when the question was liquidation and dissolution, the paying of shareholders who dissent from a fundamental change in the corporation, or the ordering of an inspection." (our emphasis)**

⁴ [Spar Aerospace Ltd. v. American Mobile Satellite Corp.](#), 2002 SCC 78, paras. 71 and ff.

neither CF(L)Co nor Twinco has submitted to the jurisdiction of Quebec in connection with the liquidation and/or dissolution of Twinco; and

- c) More specifically, the CCAA Judge made an error in law and fact by setting aside the following facts, despite not being able to point to any real and substantial connection to Quebec or the CCAA Proceedings, other than the fact that Wabush wants to monetize its minority shares in Twinco (which it can do through a liquidation in Newfoundland):
- i. Both Twinco and CF(L)Co's head and registered offices are located in the Province of Newfoundland and Labrador, and neither entity has any place of business in the Province of Québec;⁵
 - ii. The shareholders of Twinco, namely CF(L)Co, Wabush Iron, Wabush Resources, and Iron Ore Company of Canada are all extra-provincially registered in the Province of Newfoundland and Labrador;⁶
 - iii. The Dissolution Motion raises environmental issues that have arisen in connection with the Twinco Plant located in Newfoundland and Labrador. These environmental issues concern land exclusively located in Newfoundland and Labrador and their resolution will largely (if not exclusively) be governed by provincial law;⁷
 - iv. Each of the agreements that are at issue in the Dissolution Motion were negotiated and executed in the Province of Newfoundland and Labrador, and are governed by the laws of Newfoundland and Labrador;⁸

⁵ Amended Contestation (Schedule 4), paras. 15 to 17.

⁶ Amended Contestation (Schedule 4), para. 18.

⁷ Amended Contestation (Schedule 4), para. 19.

⁸ Amended Contestation (Schedule 4), paras. 21 to 23.

- v. CF(L)Co has filed the Liquidation Application in the Newfoundland Court, in accordance with the provisions of the CBCA, which, if granted, will achieve similar results as those being sought the Dissolution Motion;⁹ and
- vi. All of the assets of CF(L)Co and Twinco, against whom orders are sought, are located in the Province of Newfoundland and Labrador, and neither CF(L)Co nor Twinco have any assets in the Province of Québec¹⁰.

III. GROUNDS FOR APPEAL

- 13. The issues are significant and will cause irreparable harm to the Appellant, in that the Judgment concludes that it is Quebec and not Newfoundland that has the jurisdiction to oversee the liquidation of Twinco, and adjudicate all of the issues relating thereto, despite the fact that liquidation proceedings in connection with Twinco have been properly instituted in Newfoundland. By reason of the Judgment, the Appellant and Twinco are prevented from pursuing the liquidation in Newfoundland without risking being in contempt of the Judgment.
- 14. Moreover, they are forced to defend themselves against allegations relating to certain agreements and environmental obligations in a Quebec Court, despite the fact that these issues are governed entirely by the laws of Newfoundland. As a result, the Appellant will be required to engage counsel both in Quebec and Newfoundland, resulting in substantial and unnecessary costs, considering that this entire matter could be resolved efficiently through the proceedings initiated in Newfoundland (i.e. the Liquidation Application).

⁹ Amended Contestation (Schedule 4), paras. 24 and 25.

¹⁰ Amended Contestation (Schedule 4), para. 27.

15. Ultimately, the Judgment would permit any CCAA debtor, who holds a minority stake in a solvent foreign corporation, to force said solvent corporation to engage in CCAA proceedings in order to debate its potential liquidation on the sole basis that the CCAA debtor is seeking to monetize any and all of its assets. To the Appellant's knowledge, this has never been done, particularly when considering all of the factors outlined above, which confirm that the appropriate forum is not Quebec, or a CCAA Court sitting in Quebec, but rather the NL Court.
16. While it is true that a CCAA Court may oversee oppression claims under section 241 of the CBCA in respect of CCAA debtors¹¹, if it chooses to do so, it must still determine whether the appropriate forum is the CCAA Court, and not an alternative jurisdiction. In this regard, courts have, on a number of occasions, refused jurisdiction to hear oppression claims, specifically because there was no real and substantial connection to the jurisdiction in which the action was instituted.¹² This must be particularly true when, as is the case at hand, the alleged oppressive conduct is in respect of a solvent corporation domiciled in another jurisdiction (with no ties to Quebec) and the relief requested is the actual liquidation of a solvent corporation registered in a foreign jurisdiction, and both of the defendants to the Dissolution Motion (Twinco and CF(L)Co are registered in Newfoundland with no assets or ties to Quebec).
17. While the CCAA is a flexible statute that grants broad discretionary powers to a CCAA judge, there must be "common sense" limits to this discretion, particularly when its exercise violates the statutory provisions of another federal statute (such as sections 207 and 214 of the CBCA).
18. As such, given the question the Appellant purports to raise has never been answered by this Court and considering the broad judicial discretion conferred under Section 11 of the CCAA, which could now be argued to extend to overseeing

¹¹ Judgment, para. 47.

¹² [Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp.](#), 2003 CanLII 52135 (ON CA), paras. 48 and 72; [3017970 Nova Scotia Co. v. Johnstone](#), [2001] C.C.S. No. 13840, paras. 37 and 38; [RJM56 Holdings Inc. v. Bazinet](#), 2018 ONCA 791, para. 1.

liquidations of third party solvent corporations, the matter on appeal is of great significance to the practice of insolvency in Canada.

19. The Appellant respectfully submits that the palpable and overriding errors made by the CCAA Judge establish a precedent and should be corrected by this court to prevent serious prejudice, not only in these proceedings but in future proceedings as well.

IV. CONCLUSIONS SOUGHT

20. To the best of the Appellant's knowledge, the present case concerns the first time a CCAA Court has ruled that it has the jurisdiction to order the liquidation of a third party solvent corporation (who is not a debtor or related party in the context of the CCAA Proceedings), despite the contestation of a solvent shareholder of this same corporation.
21. The Appellant will ask the Court of Appeal to:
 - a) **ALLOW** the appeal;
 - b) **SET ASIDE** the judgment in first instance;
 - c) **GRANT** the Amended Contestation;
 - d) **DISMISS** the Dissolution Motion;
 - e) **ORDER** the respondents to pay the legal costs both in first instance and on appeal.

This notice of appeal has been served on the Respondents, has been notified to the Service List (including the attorneys who represented the Respondents in first instance) and to the Office of the Superior Court of Quebec, Commercial Division, District of Montreal.

MONTREAL, September 2, 2021

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**LIST OF SCHEDULES IN SUPPORT OF THE
NOTICE OF APPEAL***

***NOTE: The Schedules in support of the Notice of Appeal were filed in support of the Application for Leave to Appeal a Judgment Rendered in the Course of Proceedings**

SCHEDULE 1: Judgment rendered on August 12, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157

SCHEDULE 2: Copy of Wabush's *Motion for the Winding Up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated November 16, 2021

SCHEDULE 3: Copy of the *Modified Motion by Twin Falls Power Corporation to Dismiss the Application for Lack of Jurisdiction and for Forum Non-Conveniens* dated May 17, 2021

SCHEDULE 4: Copy of CF(L)Co's *Amended Contestation of the Petitioners' Motion for the Winding up and Dissolution, Distribution of Assets, Reimbursement of Monies and Additional Relief* dated May 19, 2021

SCHEDULE 5: Copy of CF(L)Co's *Originating Application for the Issuance of a Court-Supervised Liquidation and Dissolution Order pursuant to section 214(1)(b)(ii), 215 and 217 of the Canada Business Corporations Act* dated January 14, 2021

SCHEDULE 6: Copy of Wabush's *Motion for the Expansion of the Monitor's Powers* dated May 6, 2021

SCHEDULE 7: Judgment rendered on July 14, 2021 by the Honourable Michel A. Pinsonnault, of the Superior Court of Quebec, District of Montreal in court file 500-11-048114-157

MONTREAL, September 2, 2021

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COURT OF APPEAL

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CANADA
PROVINCE OF QUÉBEC
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APPLICANT – Mise-en-cause

V.

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING
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LIMITED, WABUSH RESOURCES INC.

RESPONDENTS – Petitioners

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THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY
COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED, TWIN FALLS
POWER CORPORATION

MISES-EN-CAUSE – Mises-en-cause

FTI CONSULTING CANADA INC.

MONITOR

BS0350

Our file: 030192-1029

NOTICE OF APPEAL

*(Sections 13 and 14 of the Companies' Creditors Arrangement Act (the
"CCA") and Articles 357 and 661 of the Code of Civil Procedure)*

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