

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, R.S.C., c. C-36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

AND

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

Debtors / Respondents

-and-

BLOOM LAKE RAILWAY COMPANY LIMITED

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

GROUPE UNNU-EBC S.E.N.C.

EBC INC.

Creditors / **Petitioners**

**NOTICE OF OBJECTION BY THE RESPONDENTS TO PETITIONERS' MOTION TO
TEMPORARILY LIFT THE STAY OF PROCEEDINGS AND FOR THE ISSUANCE OF A
BANKRUPTCY ORDER AND
MOTION FOR THE ANNULMENT OF A PETITION FOR THE ISSUANCE OF A
BANKRUPTCY ORDER**

TO THE HONOURABLE JUSTICE STEPHEN W. HAMILTON, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE RESPONDENTS SUBMIT:

1. INTRODUCTION

1. On December 23rd, 2015, the Respondents served a *Motion for the Issuance of an Approval and Vesting Order with respect to the sale of certain assets* (Court docket #267), which was filed in the Court record on January 7, 2016, as appears from the Court record.
2. On January 11, 2016, the Petitioners filed a *Notice of Objection* to this motion (Court docket #270), as appears from the Court record.
3. On January 11, 2016 at 4:56 p.m., the Petitioners served to the Service List a proceeding entitled "*Requête afin de lever temporairement la suspension des procédures et pour l'émission d'une ordonnance de faillite*", as appears from the e-mail communicated herewith as **Exhibit BL-1**.
4. On January 13, 2016, the Petitioners' attorneys appeared, on an *ex parte* basis, before Me Chantal Flamand, Registrar for the Bankruptcy Court, in order to ask the Court to sign their *Petition for the Issuance of a Bankruptcy Order*, filed in Court file number 500-11-049996-164, and to affix on the latter the seal of the Court, the whole as more fully appears from the e-mail and the motion served by the Petitioners to the Service List on January 14, 2016, at 3:30 p.m., communicated herewith *en liasse* as **Exhibit BL-2**.
5. After an exchange of e-mails (discussed further below), on January 15, 2016, at 2:55 p.m., the Petitioners served to the Service List an amended proceeding entitled "*Requête amendée afin de lever temporairement la suspension des procédures et pour l'émission d'une ordonnance de faillite*" in which the Petitioners added the following conclusion:

« *LEVER nunc pro tunc la suspension des procédures prévue dans l'Ordonnance Initiale, afin de permettre aux Requérantes GROUPE UNNU-EBC S.E.N.C. et EBC INC. de faire émettre la présente Requête, et d'y faire apposer la signature et le sceau de cette Honorable Cour quant à la portion visant l'émission d'une ordonnance de faillite de celle-ci conformément aux dispositions de l'article 69 des Règles générales sur la Faillite et l'Insolvabilité et DÉCLARER valable l'émission de la présente Requête et l'apposition de la signature et du sceau de cette Honorable Cour quant à la portion visant l'émission d'une ordonnance de faillite de celle-ci sur l'original de la présente Requête conformément aux dispositions de l'article 69 des Règles générales sur la Faillite et l'Insolvabilité; »*

as appears from said e-mail and amended motion communicated herewith *en liasse* as **Exhibit BL-3**.

6. On January 20, 2016, the Petitioners served to the Service List a re-amended proceeding entitled "*Requête ré-amendée afin de lever temporairement la suspension des procédures et pour l'émission d'une ordonnance de faillite*" in which they incorporate a conclusion seeking a condemnation of the Respondents to pay the costs incurred in

connection with their motion on a solicitor-client basis, as appears from the Court record (the “**Re-Amended Motion**” or “**Petition for Bankruptcy**”).

2. NOTICE OF OBJECTION BY THE RESPONDENTS TO PETITIONERS’ RE-AMENDED MOTION

2.1 Insolvency of Bloom Lake L.P. and acts of bankruptcy

7. In section VI of their Re-Amended Motion, the Petitioners allege that Bloom Lake L.P. would be insolvent and would have committed certain acts of bankruptcy which would justify Bloom Lake L.P. being declared bankrupt.

8. On this point, the Respondents underline that the sole demonstration of the satisfaction of the criteria set out in Section 43 of the *Bankruptcy and Insolvency Act* (“**BIA**”) cannot in itself justify the conversion of proceedings instituted pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) into BIA proceedings since, by definition, in all cases where a debtor has instituted a restructuring process pursuant to the CCAA, it is insolvent and has committed acts of bankruptcy.

2.2 Advantages of a potential bankruptcy of Bloom Lake L.P.

9. At paragraphs 26 to 31 of their Re-Amended Motion, the Petitioners attempt to demonstrate that the Sale and Investor Solicitation Procedure (“**SISP**”) would have been conducted under a veil of secrecy and without proper consultation of the creditors.

10. On this issue, it is the Respondents’ view that the sale process was conducted in accordance with the SISP, while respecting the rules of confidentiality that must apply to such process in order to generate the best possible outcome for all stakeholders.

11. At paragraph 41 of their Re-Amended Motion, the Petitioners allege that the creditors would be in a better position to control the administration of the estate in a BIA context since they would be entitled to appoint inspectors.

12. On this point, the Respondents submit that, in a CCAA context, this supervision is exercised by the Monitor and the Court. In the present matter, the Petitioners have provided no indication of any nature whatsoever that the supervision exercised by this Court and the Monitor in the current process would have been either inappropriate or insufficient.

2.3 Higher degree of control with respect to the trustee’s acts and professional fees

13. At paragraphs 42 to 46 of their Re-Amended Motion, the Petitioners raise the possibility that the professional fees could be lower in a bankruptcy process than in a CCAA process without providing any specific allegations in support of this affirmation.

14. This statement does not account for the amount of time and effort any new professionals that would get involved in this matter would have to invest in order to so much as hope to achieve the same level of proficiency as the professionals who have already been acting in this matter for over a year.

2.4 Failure of the SISP

15. At paragraphs 47 to 56 of their Re-Amended Motion, the Petitioners attempt to demonstrate that the SISP would have been a failure.
16. In fact, the Petitioners' true motives in filing their Petition for Bankruptcy can be easily gleaned from the statement made at paragraph 52 of the Re-Amended Motion that "*le processus du SISP s'est soldé par un échec relativement à leurs intérêts*" (we underline). On this point, this Court should not be beholden to the interest of a single class of creditors, but rather the interest of all stakeholders, including the Unions, the Municipality of Fermont, the protection of the Québec Environment and the unsecured creditors.

2.5 Alternative solution proposed by the Petitioners

17. At paragraphs 57 to 70 of their Re-Amended Motion, the Petitioners try to demonstrate that a bankruptcy would be necessary in order to allow the Bloom Lake mine to be put in care and maintenance mode for a certain period of time.
18. As a point of departure, and despite the fact that the Respondents believe that this approach is inappropriate for numerous reasons, it could just as easily be adopted in a CCAA context as in a BIA context.
19. On this point, the Respondents believe that the Petitioners are attempting to divert money that would be otherwise payable to other creditors in order to maximise the realization of a particular asset for the sole benefit of the limited group of creditors to which they belong.
20. As will be further demonstrated at the hearing, the scenario proposed by the Petitioners is founded on premises that are totally unrealistic.
21. For example, the Petitioners state, at paragraph 66(c) of their Re-Amended Motion, that:

« La stratégie de mise en veilleuse de la Mine Bloom Lake proposée par les Requérantes permettrait de :

(c) permettre de maintenir et conserver la Mine Bloom Lake jusqu'au milieu de l'année 2019... »

while their own expert states the following at paragraph 49 of its report :

"Under the revised care and maintenance costs scenario we have prepared, I estimate that the Bloom Lake Mine could be maintained up to 33 months (February 1, 2016 to November 1, 2018)."

22. The Petitioners do not provide any explanation as to how the operation of the mine could be maintained between November 2018 and mid-2019.
23. Moreover, as will be demonstrated further at the hearing, the long term forecasts that have been incorporated into the PWC Report demonstrate that the price of iron ore after 2018 will still be below a level, according to the Petitioners 'expert, favouring a restart of the operations at Bloom Lake mine.

24. In short, a restricted group of creditors cannot object to a proposed sale of assets in order to allow them to speculate on the value of these assets for their sole benefit and in a way that would be detrimental to all other stakeholders.
25. The case law being crystal-clear that even a superior offer cannot be accepted by a debtor in a CCAA process once a bidder has been selected pursuant to a SISP process, the Respondents fail to see how a purely hypothetical offer of an undetermined amount can even be considered by the Court.
26. Moreover, in a bankruptcy scenario, there would be no stay of proceedings against the secured creditors such as the City of Vermont and the construction lien hypothec holders who would be free to take steps to enforce their security which would cause instability and multiple proceedings and be detrimental to the estate and the stakeholders in general.

3. MOTION TO OBTAIN THE ANNULMENT OF A PETITION FOR THE ISSUANCE OF A BANKRUPTCY ORDER

27. As stated above, on January 13, 2016, the Petitioners obtained, on an *ex parte* basis, the issuance of the Petition for Bankruptcy against Bloom Lake L.P., in clear violation of the Initial Order issued by this Court in the present matter.
28. On January 15, 2016, at 10:20 a.m., the Monitor's counsel contacted the Petitioners' attorneys to seek an explanation as to why they had decided to present, on an *ex parte* basis and without any notice, the Petition for Bankruptcy in view of the existing stay of proceedings ordered by this Court, as appears from the e-mail communicated herewith as **Exhibit BL-4**.
29. On January 15, 2016, at 1:28 p.m., the Petitioners' attorneys replied that the issuance of the Petition for Bankruptcy was an inconsequential issue, as appears from the e-mail communicated herewith as **Exhibit BL-5**.
30. The Respondents strongly disagree with the Petitioners in this regard and add that the Petitioners' actions may have caused significant damages to the Respondents' business.
31. On January 15, 2016, at 3:38 p.m., the Monitor's counsel informed this Court of the fact that the Petition for Bankruptcy had been issued, as appears from the e-mail communicated herewith as **Exhibit BL-6**.
32. In light of the above, the Respondents are well-founded asking this Honourable Court to declare that the issuance of the Petition for Bankruptcy made in the Court file bearing number 500-11-049996-164 shall be considered as null and void.
33. With respect to the request made to Mtre. Chantal Flamand to sign the Petition for Bankruptcy and to affix on it the seal of this Court, it constitutes a clear breach of an order of this Court. The Petitioners should have proceeded in two steps by firstly requesting that the stay be lifted and then filing a bankruptcy petition with prior authorization.

34. The Respondents reserve their rights to claim from the Petitioners any damages they have sustained in connection with the issuance of the Petition for Bankruptcy in breach of the existing stay of proceedings.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the Notice of Objection by the Respondents to Petitioners' Motion to Temporarily Lift the Stay of Proceedings and for the Issuance of a Bankruptcy Order;

GRANT the Respondents' Motion for the Annulment of the Petition for the Issuance of a Bankruptcy Order that has been filed in Court record bearing number 500-11-049996-164;

DISMISS the Petitioners' motion entitled: "*Requête ré-amendée pour lever temporairement la suspension des procédures et pour l'émission d'une ordonnance de faillite*".

RESERVE Respondents' rights to seek from Petitioners any damages they may have sustained in connection with the filing of the Petition for the Issuance of a Bankruptcy Order in breach of the existing stay of proceedings.

THE WHOLE WITH COSTS, taxed on a solicitor-client basis.

Montréal, January 22, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Respondents

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of Bloom Lake General Partner Limited and Cliffs Quebec Iron Mining ULC, the President and a director of Bloom Lake Railway Company Limited and 8568391 Canada Limited, and a director of Quinto Mining Corporation, having a place of business at 755, Route 389, P.O. Box 2029, Fermont, Québec G0G 1J0, solemnly affirm that all the facts alleged in the present *Notice of Objection by the Respondents to Petitioners' Motion to Temporary Lift the Stay of Proceedings and for the Issuance of a Bankruptcy Order and Motion for the Annulment of a Petition for the Issuance of a Bankruptcy Order* are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio, on this 22nd day of
January, 2016



Notary Public

ADAM D. MUNSON, Atty.
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No
Expiration Date
Section 147.03 R.C.


NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present *Notice of Objection by the Respondents to Petitioners' Motion to Temporary Lift the Stay of Proceedings and for the Issuance of a Bankruptcy Order and Motion for the Annulment of a Petition for the Issuance of a Bankruptcy Order* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **January 27, 2016** at a time and in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, January 22, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Respondents

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
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BLOOM LAKE GENERAL PARTNER LIMITED

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8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

AND

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Debtors / Respondents

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Monitor

-and-

GROUPE UNNU-EBC S.E.N.C.

EBC INC.

Creditors / Petitioners

LIST OF EXHIBITS

(In support of the *Notice of Objection by the Respondents to Petitioners' Motion to Temporary Lift the Stay of Proceedings and for the Issuance of a Bankruptcy Order and Motion for the Annulment of a Petition for the Issuance of a Bankruptcy Order*)

BL-1 E-mail of January 11, 2016, sent at 4:56 p.m.

BL-2 *En liasse*, e-mail of January 14, 2016, sent at 3:30 p.m. and Petitioner's Motion.

BL-3 *En liasse*, e-mail of January 15, 2016, sent at 2:55 p.m., and Petitioner's Amended motion.

BL-4 E-mail of January 15, 2016, sent at 10:20 a.m.

BL-5 E-mail of January 15, 2016, sent at 1:28 p.m.

BL-6 E-mail of January 15, 2016, sent at 3:38 p.m.

Montréal, January 22, 2016


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Respondents

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)**

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

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Debtors / Respondent

and-

BLOOM LAKE RAILWAY COMPANY LTD.

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

GROUPE UNNU-EBC S.E.N.C. & AL.

Creditors / Petitioners

**NOTICE OF OBJECTION BY THE RESPONDENTS TO
PETITIONERS' MOTION TO TEMPORARILY LIFT THE
STAY OF PROCEEDINGS AND FOR THE ISSUANCE
OF A BANKRUPTCY ORDER AND MOTION FOR THE
ANNULMENT OF A PETITION FOR THE ISSUANCE OF
A BANKRUPTCY ORDER, AFFIDAVIT, NOTICE OF
PRESENTATION AND EXHIBITS BL-1 TO BL-6**

ORIGINAL

M^{re} Bernard Boucher

BB-8098

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