

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. 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,  
WABUSH IRON CO. LIMITED AND WABUSH  
RESOURCES INC.**

Petitioners / Respondents

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED  
PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY  
LIMITED, WABUSH MINES, ARNAUD RAILWAY  
COMPANY AND WABUSH LAKE RAILWAY COMPANY  
LIMITED**

Mises-en-cause

-and-

**FTI CONSULTING CANADA INC.**

Monitor

-and-

**MOELIS & COMPANY LLC**

Mise-en-cause

**MFC BANCORP LTD.**

Petitioner

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**NOTICE OF OBJECTION BY THE WABUSH CCAA PARTIES TO  
PETITIONER'S MOTION TO PARTIALLY LIFT THE STAY OF PROCEEDINGS,  
TO VARY A COURT ORDER, TO OBTAIN PAYMENT OF SUMS OF MONEY HELD IN  
TRUST BY THE MONITOR, TO TERMINATE A SUB-LEASE AND FOR ADDITIONAL RELIEF  
(LINKED TO COURT DOCKET #380)**

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

**1. INTRODUCTION**

1. The Wabush CCAA Parties hereby object to the *Motion to Partially Lift the Stay of Proceedings, to Vary a Court Order, to Obtain Payment of Sums of Money Held in Trust by the Monitor, to Terminate a Sub-Lease and for Additional Relief* (the “**MFC Motion**”) of MFC Bancorp Ltd., formerly known as MFC Industrial Ltd. (“**MFC**”).
2. The MFC and Wabush Iron Co. Limited are party to a mining lease dated September 2, 1959 (the “**MFC Sub-Lease**”), as appears from the Court record.
3. The MFC Sub-Lease provides for the payment of on an annual payment and of Minimum Royalty Payments (as defined in the MFC Royalty Litigation documentation).
4. The quantum of the Minimum Royalty Payments is the subject of a dispute between the Wabush CCAA Parties and MFC (the “**MFC Royalty Litigation**”).
5. The MFC Royalty Litigation is proceeding, with the next procedural step being the filing by the Wabush CCAA Parties of an expert report. No date has yet been set for a hearing.
6. In the MFC Motion, MFC seeks the lifting of the Stay, in order to proceed with a motion for an Order to, *inter alia*:
  - a) Terminate the MFC Sub-Lease;
  - b) Require immediate payment of Minimum Royalty Payments;
  - c) Reserve rights of MFC to acquire certain assets of the Wabush CCAA Parties;
  - d) Require the Monitor to provide MFC copies of all proofs of claim filed against the Wabush CCAA Parties by CNR and its related parties; and
  - e) Suspend the consideration of liquidation proposals.

**2. THE MFC SUB-LEASE SHOULD NOT BE TERMINATED**

7. As this Court is aware, the MFC Sub-Lease provides for annual rent payments of \$360 per year and for Minimum Royalty Payments on a quarterly basis.
8. The Wabush CCAA Parties have not received any notice of default in connection with the annual rent payments, and Minimum Royalty Payments are being deposited with the Monitor in accordance with the Order made by this Court on December 4, 2015.
9. Therefore, the Wabush CCAA Parties submit that they are not in default and that MFC is therefore not entitled to termination of the MFC Sub-Lease.
10. In addition, it is unclear on the face of the MFC Sub-Lease, whether MFC has a right of termination if the stay of proceedings was lifted.

9. Therefore, the Wabush CCAA Parties submit that they are not in default and that MFC is therefore not entitled to termination of the MFC Sub-Lease.
10. In addition, it is unclear on the face of the MFC Sub-Lease, whether MFC has a right of termination if the stay of proceedings was lifted.
11. While MFC alleges that there is no reason for the MFC Sub-Lease to remain in force, the Wabush CCAA Parties submit that:
  - a) A significant number of movable assets are located on the Sub-Lease property; and
  - b) It belongs to the Wabush CCAA Parties and the Monitor to determine, based on a benefit analysis for the stakeholders, whether the MFC Sub-Lease should be disclaimed. The termination of the MFC Sub-Lease is not to be dictated by a party that is not privy to the global restructuring considerations of the Monitor and the Wabush CCAA Parties.
12. Therefore, the Wabush CCAA Parties submit that the MFC Sub-Lease should not be terminated by the Court given: (i) the absence of a situation of default, (ii) the uncertainty that MFC is entitled to termination even if the stay of proceedings was lifted, (iii) the fact that significant assets are stored on the Sub-Lease Property, and (iv) the fact that the Wabush CCAA Parties, in concert with the Monitor should be the ones to determine whether the continuation of the Sub-Lease is beneficial to the stakeholders generally.

**3. MFC CANNOT REQUIRE IMMEDIATE MINIMUM ROYALTY PAYMENTS**

13. In the MFC Motion, MFC requires the Court immediate payment of the Minimum Royalty Payments be ordered by the Court, notwithstanding the ongoing MFC Royalty Litigation.
14. To grant this Order would have the effect of bypassing the steps necessary to deal with such a complex litigation, including the analysis of expert evidence and discovery.
15. The Wabush CCAA Parties agree with the Monitor, when he notes at para. 143 of his 24<sup>th</sup> report that the issue of the Minimum Royalty Payments cannot be dealt with on a summary basis as requested by MFC, and should undoubtedly be dealt with within the already fully established framework of the MFC Royalty Litigation.

**4. MFC HAS NO CURRENTLY AVAILABLE RIGHT TO ACQUIRE ASSETS OF WABUSH CCAA PARTIES**

16. In the MFC Motion, MFC requires the Court to lift the stay of proceedings and to reserve MFC the right to acquire certain assets of the Wabush CCAA Parties.
17. According to the MFC Sub-Lease, MFC has rights to acquire assets at reasonable market price in cases where the MFC Sub-Lease is terminated pursuant to its termination provisions.
18. Given the absence of such termination however, MFC has no currently available rights under the MFC Sub-Lease to acquire any assets of the Wabush CCAA Parties.



19. However, given that the MFC Sub-Lease requires it to purchase assets at a reasonable market price, lifting the stay of proceedings becomes unnecessary and if MFC wished to acquire certain assets at a reasonable market price, it has the right to submit a proposal for the acquisition of such assets within the CCAA Proceedings.
20. Indeed, at para. 144 of its 24<sup>th</sup> report, the Monitor outlines the numerous steps taken to encourage MFC to acquire assets of the Wabush CCAA Parties.
21. The Wabush CCAA Parties understand that no such proposal has been received by the Monitor.
22. Therefore, lifting the stay as requested in the MFC Motion would not only be detrimental to stakeholders generally, but will also not put MFC in better position than it is currently in terms of purchasing assets of the Wabush CCAA Parties.

**5. MFC IS ENTITLED TO REVIEW CLAIMS OF CNR UNDER THE CLAIMS PROCEDURE ORDER**

23. MFC requires that an order be issued by the Court requiring the Monitor to provide to MFC copies of all proofs of claim filed against Wabush CCAA Parties by CNR and its related parties.
24. The Wabush CCAA Parties respectfully submit that this request is redundant, as paragraph 62 of the Claims procedure Order already provides such ability to MFC, upon a request to the Monitor.
25. The Wabush CCAA Parties understand that no such request has been received by the Monitor.

**6. LIQUIDATION PROPOSALS SHOULD NOT BE SUSPENDED BY THE COURT**

26. MFC asks the Court to suspend the consideration of liquidation proposals.
27. The Wabush CCAA Parties respectfully submit that such a suspension would delay the completion of CCAA Proceedings and would prejudice both the rights of stakeholders generally, and the right of the Wabush CCAA Parties to continue to sell assets if the MFC Sub-Lease is terminated.
28. In addition, MFC does not suffer any prejudice from the process to obtain liquidation proposals, as it has been invited to take part in the SISF process and is at liberty to make an offer for the purchase of the assets at any time.

**7. CONCLUSION**

29. In light of the foregoing, the Wabush CCAA Parties submit that the MFC Motion should be dismissed with costs by the Court.
30. In addition, the Wabush CCAA Parties share the comments made by the Monitor in its 24<sup>th</sup> report regarding statements made by MFC concerning favouring shareholders.
31. Such statements are unfounded and should not be taken into consideration by the Court.

32. Indeed, the Court has supervised every step of the CCAA Proceedings to ensure that the process favors the stakeholders generally.
33. To grant the MFC Motion at this stage would undermine the work that has been accomplished to date, but will also prejudice the stakeholders that the Court, the Monitor, and the Wabush CCAA Parties have been trying to favour throughout the CCAA Proceedings.
34. This Notice of Objection is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** this Notice of Objection;

**DISMISS**, for the rest, the *Motion to Partially Lift the Stay of Proceedings, to Vary a Court Order, to Obtain Payment of Sums of Money Held in Trust by the Monitor, to Terminate a Sub-Lease and for Additional Relief*;

**THE WHOLE** with costs.

Montréal, October 7, 2016

  
**BLAKE, CASSELS & GRAYDON LLP**  
Attorneys for the Wabush CCAA Parties

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**ORIGINAL**

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