

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° 500-11-048114-157

S U P E R I O R C O U R T
(Commercial Division)

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

BLOOM LAKE GENERAL PARTNER
LIMITED
QUINTO MINING CORPORATION
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.

Petitioners

-and-

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

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

TWIN FALLS POWER CORPORATION
CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

Mises-en-cause

**MODIFIED MOTION BY TWIN FALLS POWER CORPORATION TO
DISMISS THE APPLICATION FOR LACK OF JURISDICTION AND FOR FORUM
NON-CONVENIENS**

TO THE HONOURABLE MR. JUSTICE MICHEL PINSONNAULT, J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, THE MISES-EN-CAUSE, TWIN FALLS POWER CORPORATION STATES AS FOLLOWS:

Overview

1. The present proceeding is an application in the context of a CCAA proceeding commenced on January 27, 2015 and subject to various subsequent orders in respect of proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners and the Mises-en-cause (collectively the "**CCAA Parties**"), the whole as appears from the Court record and as set out in paragraphs 1 - 7 of the Wabush Motion as defined below (the "**CCAA Proceedings**").
2. On 16 November 2020, the CCAA Parties brought a motion (the "**Wabush Motion**") seeking a series of orders with regard to Twin Falls Power Corporation ("**Twinc**o"). The Wabush Motion was brought pursuant to section 11 of the CCAA, and sections 214 and 241 of the *Canada Business Corporation Act* (the "**CBCA**").
3. The Wabush Motion seeks the following orders, the whole as set out at paragraph 13 of the Wabush Motion (collectively the "**Orders**" and each, an "**Order**"):
 - (a) confirming Churchill Falls (Labrador) Corporation Limited's ("**CFLCo**") liability for Twinc
 - (b) compelling an accounting from Twinc
 - (c) directing CFLCo to reimburse all Reimbursable Environmental/Maintenance Costs (such amount to be reimbursed by CFLCo, being the "**CFLCo Reimbursement**") to Twinc

- (d) 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 defined in paragraph 23 of the Wabush Motion) net of all reasonable fees and expenses incurred by Twinco to implement and complete the wind up and dissolution being sought in this Motion (the “**Remaining Twinco Cash**”), and (ii) the CFLCo Reimbursement to Twinco’s shareholders, including Wabush Iron Co. Limited and Wabush Resources Inc. (collectively the “**Wabush Parties**”), on a pro rata basis;
 - (e) in the alternative to (d), directing Twinco and/or CFLCo to purchase the shares of Twinco held by the Wabush Parties pursuant to section 214(2) and/or section 241(3)(f) of the CBCA for a purchase price equal to the amount of the Wabush Parties’ respective pro rata share of: (i) the Twinco Cash, and (ii) the CFLCo Reimbursement; and
 - (f) such further and other relief as this Honourable Court deems just.
4. The central issues to the Wabush Motion raised by the CCAA Parties are as follows (the “**Issues**”):
- (i) a determination and calculation of any outstanding contractual liabilities as between Twinco and CFLCo (the “**Contractual Claims**”);
 - (ii) whether it is just and equitable to order the liquidation and dissolution of Twinco (the “**Wind-Up Claim**”); and
 - (iii) whether: (i) in respect of Twinco: (a) there is any act or omission of Twinco that effects a result; (b) the business or affairs of Twinco are or have been carried on or conducted in a manner; or (c) the powers of the directors of Twinco are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Wabush Parties and, if so, what is the appropriate remedy (the “**Oppression Claims**”).
5. Twinco submits that Québec courts do not have jurisdiction to hear the Issues raised in the Wabush Motion.
6. In the alternative Twinco submits that, if it is determined Québec courts do have jurisdiction to hear the Issues, that this Honourable Court should decline jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues, pursuant to article 3135 of the *Civil Code of Québec* (“**CCQ**”).

Jurisdiction of Contractual Claims

7. Orders (a), (b) and (c) sought by the Wabush Motion relate to the determination of contractual rights and liabilities between Twinco and CFLCo.

8. Order (a) would require a determination as to the contractual liabilities for maintenance and environmental liabilities as between Twinco and CFLCo, on the basis of the interpretation of a series of Material Agreements (as defined at paragraph 26 of the Wabush Motion and attached thereto as Exhibits R-5, R-6 and R-7) between Twinco and CFLCo (and other parties) dating since 1961. Order (b) requires an accounting of all monies spent by Twinco assuming the determination in Order (a). Order (c) requires the identification of an amount owing by CFLCo to Twinco as a result of the determination in Orders (a) and (b), and an order against CFLCo for the payment of this amount.
9. Orders (a), (b) and (c) therefore require the determination of both the legal rights between Twinco and CFLCo under the Material Agreements, and an accounting of a history of transactions and activities by Twinco since potentially 1961 (the date of the oldest of the Material Agreements).
10. Neither Twinco nor CFLCo is asking for their contractual rights to be determined by this Honourable Court. Further, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Wabush Motion has been brought.
11. The Wabush Motion is anchored in section 11 of the CCAA, which relates to the general power of a CCAA court on application “in respect of a debtor company”. However, notably, section 11 only refers to applications “in respect of a debtor company”.
12. Twinco submits that the Wabush Motion, while framed as part of the CCAA Proceedings, is not an application in respect of a debtor company. Rather, Twinco submits that the Motion is, in substance, an application primarily in respect of Twinco and its affairs. It requires adjudication of Twinco’s contractual rights, a review and accounting of Twinco’s history of transactions, and the winding up of Twinco or an order for Twinco to purchase the shares of the Wabush Parties. As such, Twinco submits that this Honourable Court does not have jurisdiction to decide the issues on the basis of section 11 of the CCAA.
13. Further, none of the 5 factors grounding jurisdiction of Québec Courts under article 3148 CCQ are present in this case. Conversely, the following facts demonstrate the lack of a connection to the jurisdiction of Québec:
 - (i) Twinco has its registered office and chief place of business in Newfoundland and Labrador;
 - (ii) Twinco has no operations in the province of Québec, has no place of business in Québec, nor any assets in the province of Québec;

- (iii) there is no allegation in the Wabush Motion that any contractual obligation for any of the parties would have to be performed in Québec, or that any prejudice would have been suffered in Québec;
 - (iv) the Material Agreements are not governed by the laws of Québec; and
 - (v) Twinco has not attorned to the jurisdiction of Québec.
14. For these foregoing reasons, the Québec Courts do not have jurisdiction to hear the Issues arising out of the Wabush Motion.

Forum non conveniens

15. In the alternative, if this Honourable Court determines that it has jurisdiction to hear the Wabush Motion, Twinco submits that this Honourable Court is not the most convenient or appropriate forum to determine the Issues, and that this Honourable Court should instead decline its jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is clearly the most appropriate forum, pursuant to article 3135 CCQ.
16. The connection between the Issues and the forum of Newfoundland and Labrador is plainly evident. First, both Twinco and CFLCo are headquartered and chiefly operate in Newfoundland and Labrador. Second, the Material Agreements are not governed by the laws of Québec. Two of the Material Agreements, the Sublease and the Participation Agreement (each as defined in paragraph 26 of the Wabush Motion), expressly provide that they are governed by the laws of Newfoundland (now Newfoundland and Labrador); the third Material Agreement, the Operating Lease (as defined at paragraph 26 of the Wabush Motion) is silent on jurisdiction but is a subsidiary document of the Sublease.
17. Furthermore, any consideration of any potential environmental liabilities that Twinco might have would arise exclusively under the laws of Newfoundland and Labrador
18. The only connecting factor of Twinco or the Material Agreements to the CCAA Proceedings is that the Wabush Parties collectively own a total of 17.062% of the shares of Twinco, the remainder being held by Iron Ore Company of Canada (“**IOC**”) (49.6%) and CFLCo (33.3%).
19. In conclusion, there is no real and substantial connection or any connecting factor to connect the jurisdiction of the Superior Court of Québec and the Contractual Claims of the CCAA Parties. Twinco submits that the Québec Courts should not determine the respective rights and liabilities of Twinco and CFLCo, two Newfoundland and Labrador-based corporations, under the Material Agreements.

Jurisdiction of Oppression Claims and the Wind-Up Claim

20. Orders (d) and (e) sought by the CCAA Parties seek to wind up Twinco or, in the alternative, force Twinco to buy out the Wabush Parties' respective equity holdings in Twinco. Both Orders (d) and (e) also seek to mandate the respective amounts to be paid by Twinco to the Wabush Parties in either scenario. Importantly, these pay-out amounts are related to, and reliant upon, the amounts which would be determined in the course of granting Orders (a), (b) and (c).
21. Per the Wabush Motion, Orders (d) and (e) are requested pursuant to sections 214 and 241 of the CBCA, on the basis that Twinco and the CFLCo nominees on the Twinco Board of Directors have engaged in oppressive conduct which oppresses, unfairly prejudices and/or unfairly disregards the interests the Wabush Parties. Order (d) is also requested pursuant on the basis that it is just and equitable to liquidate and dissolve Twinco.
22. Relying upon the facts set out in paragraphs 13 and 16 to 18, Twinco submits that there is no real and substantial connection or any connecting factor whatsoever to connect the jurisdiction of the Superior Court of Québec and the Oppression Claims and the Wind-Up Claim of the CCAA Parties. Further, Twinco submits that it is contrary to the statutory provisions of the CBCA and the CCAA for the Superior Court of Québec to consider or grant Orders (d) and (e).

Jurisdiction under CBCA

23. Section 207 of the CBCA states that, for Part XVIII (which includes Section 214), "court" means a court having jurisdiction in the place where the corporation has its registered office". The registered office for Twinco is located in St. John's, Newfoundland and Labrador, as demonstrated by the CBCA registration record included as Exhibit R-4 filed with the Court in support of the Wabush Motion. As a result, pursuant to the CBCA the "court" with jurisdiction over a claim under section 214 would be the Supreme Court of Newfoundland and Labrador.
24. Section 241 of the CBCA provides a court the authority, upon a finding of oppressive conduct, to grant either remedy (d) or (e) as possible remedies. Section 241 is not subject to section 207; under the CBCA generally, the Québec Superior Court would have similar jurisdiction as the Supreme Court of Newfoundland and Labrador. However, as is discussed above, there lacks a real and substantial connection between the underlying subject matter of the Oppression Claims and the jurisdiction of Québec.

Jurisdiction under CCAA

25. Alternatively, section 9(1) of the CCAA relates to the jurisdiction of a court to receive applications related to the more broadly defined term "company". Section 9(1) specifies that the court with jurisdiction in the province within which the head office or chief place of business of a "company" is located would have jurisdiction

over an application under any provision of the CCAA. Twinco again notes that its head office and chief place of business is in Newfoundland and Labrador and relies upon the facts set out in paragraphs 13 and 16 to 18. As such, any application which primarily and significantly relates to Twinco's affairs should be brought in the jurisdiction of Newfoundland and Labrador.

26. While pursuant to section 42 of the CCAA a CCAA Court may apply provisions of the CBCA as part of a CCAA process, Twinco submits it may only do so where (i) the matter is under the jurisdiction of the CCAA court and (ii) where the requested relief is consistent with the purposes of the CCAA.
27. As stated above in paragraph 10, both Twinco and CFLCo are strangers to the CCAA Proceedings. They are not subject to the orders in the CCAA Proceedings and have not entered the CCAA Proceedings as creditors of the CCAA companies. The only connection of Twinco to the CCAA proceedings is having the Wabush Parties as minority shareholders; CFLCo has no connection to the CCAA Proceedings.
28. The purpose of the CCAA Proceedings relates to the liquidation of the CCAA Parties. The Issues in the Wabush Motion, however, do not relate to the relationship between the Wabush Parties and their creditors, but rather requires an adjudication of the affairs of Twinco or CFLCo, both of which are strangers to the CCAA Proceedings. Twinco submits that the relief requested in the Wabush Motion is outside the scope of section 11 of the CCAA.

Forum non conveniens

29. Article 3135 CCQ recognizes that even if a Québec Court determines it has jurisdiction, it may decline jurisdiction where it considers the courts of another jurisdiction "are in a better position to decide the dispute".
30. Twinco submits that all Issues, including the Contractual Claims, the Oppression Claims and the Wind-Up Claim raised by the Wabush Motion are most appropriately determined by the Supreme Court of Newfoundland and Labrador. The Supreme Court of Newfoundland and Labrador would be the court having a real and substantial connection to Twinco and CFLCo, and the Material Agreements and the laws which govern them. As well, the jurisdiction of Newfoundland and Labrador is where witnesses and evidence required for the determination of the Issues and the required monetary calculations for the Orders are located.
31. Twinco submits that even if this Court determines it has jurisdiction, this matter would be an appropriate context to decline to exercise jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues arising out of the requested relief sought by the Wabush Parties and other CCAA Parties under the Wabush Motion.

Petitioner's Motion for the Expansion of the Monitor's Powers

32. On May 6, 2021, the CCAA Parties filed a Motion for the Expansion of the Monitor's Powers pursuant to sections 11 and 23 of the CCAA, specifically sections 23(1)(c) and (k).
33. Just like the Wabush Motion, the Motion for the Expansion of the Monitor's Powers is anchored in section 11 of the CCAA, which relates to the general power of a CCAA court on application "in respect of a debtor company".
34. Twinco submits that just like the Wabush Motion, the Motion for the Expansion of the Monitor's Powers, while framed as part of the CCAA Proceedings, is not an application in respect of a debtor company.
35. To repeat, neither Twinco nor CFLCo is a party to the CCAA Proceedings, nor is either corporation a party governed by the original or any subsequent order issued in the CCAA Proceedings. Rather, both Twinco and CFLCo are strangers to the CCAA Proceedings in which the Motion for the Expansion of the Monitor's Powers has been brought.
36. As such, for the same reasons as stated above, Twinco submits that this Honourable Court does not have jurisdiction to issue an order expanding the powers of the monitor in the CCAA Proceedings pursuant of section 11 of the CCAA.
37. In the alternative Twinco submits that, if it is determined Québec courts do have jurisdiction to hear the Issues, that this Honourable Court should, for the same reasons as stated above, decline jurisdiction on the basis that the Supreme Court of Newfoundland and Labrador is in a better position to decide the Issues, pursuant to article 3135 CCQ.
38. Alternatively, if this Court were to decide that it had jurisdiction to make such an order, Twinco respectfully submits that the CCAA does not permit the monitor's powers to be expanded in the manner suggested by the CCAA Parties.
39. The CCAA Parties are seeking the issuance of an order expanding the powers of the monitor in the CCAA Proceedings so that it may, directly or through its counsel, do the following:
 - (a) compel the production, from time to time, from any Person having possession, custody or control of any books, records, accountings, documents, correspondences or papers, electronically stored or otherwise, relating to the Twinco Interest, CFLCo Indemnity and CFLCo Maintenance

Obligations (each as defined below), including the Twinco Requested Information (as defined below) (the "Requested Information") in respect of the period from and after January 1, 2010 and such earlier periods as may be approved by further order of the Court (the "Disclosure Period");

- (b) require any Requested Information to be delivered within thirty (30) days of the Monitor's request or such longer period as the Monitor may agree to in its discretion; and
- (c) conduct investigations from time to time, including examinations under oath of **any Person** reasonably thought to have knowledge relating to the Requested Information, in respect of the Disclosure Period.

[Our emphasis.]

- 40. The powers provided for in sections 23(1)(c) and (k) of the CCAA are not broad enough to cover the powers claimed by the CCAA Parties in their *Motion for the Expansion of the Monitor's Powers*. Moreover, those powers only relate to a debtor company.
- 41. Section 21(1)(c) provides that the monitor shall "make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of **the company's** business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings" (our emphasis).
- 42. Section 21(1)(k) provides that the monitor shall "carry out any other functions in relation to the company that the court may direct."
- 43. "Company" necessarily means "debtor company" as referred to in paragraph 1 of this provision:

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of **a debtor company**, [...]

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its

financial difficulties or insolvency and file a report with the court on the monitor's findings;

[...]

(k) carry out any other functions in relation to the company that the court may direct.

[Our emphasis.]

44. The CCAA Parties' suggestion that the monitor should be able to investigate "any person" goes well beyond the powers provided for in the CCAA, which only provide for investigations in respect of a debtor company.
45. To be clear, Twinco is not a debtor company within the meaning of the CCAA.
46. Therefore, it is not appropriate for this Court to grant the CCAA Parties' *Motion for the Expansion of the Monitor's Powers*.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

AS FOR PETITIONER'S MOTION FOR THE WINDING UP AND DISSOLUTION, DISTRIBUTION OF ASSETS, REIMBURSEMENT OF MONIES AND ADDITIONAL RELIEF:

DISMISS OR STAY the Petitioner's motion; or

ALTERNATIVELY

DECLINE jurisdiction in favour of the Courts of Newfoundland and Labrador.

THE WHOLE with costs.

AS FOR PETITIONER'S MOTION FOR THE EXPANSION OF THE MONITOR'S POWERS:

DISMISS the Petitioner's motion; or

ALTERNATIVELY

DECLINE jurisdiction in favour of the Courts of Newfoundland and Labrador.

THE WHOLE with costs.

MONTREAL, this 17th day of May 2021

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Lawyer for the Mises-en-cause

TWIN FALLS POWER CORPORATION

Our file: 5667-1

BI0080

**NOTICE OF PRESENTATION
COMMERCIAL (ROOM 16.10)**

1. PRESENTATION OF THE *MOTION BY TWIN FALLS POWER CORPORATION TO DISMISS THE APPLICATION FOR LACK OF JURISDICTION*

BE ADVISED that the Mises-en-cause will present the present *Modified Motion by Twin Falls Power Corporation to dismiss the application for lack of jurisdiction* in practice division of the Superior Court of Québec - Commercial Division, sitting in and for the Judicial District of Montreal, in a room to be determined of the Montreal Courthouse, located at 1, Notre-Dame St. East, Montreal, on **Friday May 21st, 2021** at **9: 30 a.m, in room 12.61.**

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The coordinates to join the calling of the roll in room 12.61 are as follows:

a) **Using Teams:** to open the permanent link established for room 12.61, click [here](#)¹;

You must then fill in your name and click “Join Now”. In order to facilitate the process and the identification of the parties, we invite you to fill in your name in the following manner:

Attorneys: Mtre. Name, Surname (name of the party being represented)

Parties not represented by an attorney: Name, Surname (specify: Plaintiff, Defendant or other)

For persons attending a public hearing: you can simply indicate “public”.

By telephone:

Canada (Toll free number): (833) 450-1741

Canada, Québec (Charges will apply): +1 581-319-2194
Conference ID: 820 742 874#

By videoconference: teams@teams.justice.gouv.qc.ca

VTC Conference ID: 11973653703

¹ The permanent links for the Montreal courthouse rooms can also be found in the document entitled *Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale* under the heading *Audiences virtuelles* found on the Superior Court of Québec website at : <https://coursuperieureduquebec.ca/roles-de-la-cour/audiences-virtuelles>.

In person, if and only if the above-mentioned means are not available.

1 Notre-Dame St. East, Montréal, Québec

3. FAILURE TO ATTEND THE CALLING OF THE ROLL

TAKE NOTICE that should you fail to attend the calling of the roll, a judgment by default could be rendered against you at the hearing of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTICE that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTICE that before referring your dispute to the courts, you must consider private dispute prevention and resolution processes which are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 1 and 2)

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, this 17th day of May 2021

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Lawyer for the Mises-en-cause

TWIN FALLS POWER CORPORATION

Our file: 5667-1

BI0080

N° 500-11-048114-157

SUPERIOR COURT (Commercial Division)
DISTRICT OF MONTREAL
PROVINCE OF QUEBEC

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
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Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & AL.**
Mises-en-cause

-and-

FTI CONSULTING CANADA INC.
Monitor

-and-

**TWIN FALLS POWER CORPORATION
CHURCHILL FALLS (LABRADOR) CORPORATION
LIMITED**
Mises-en-cause

**MODIFIED MOTION BY TWIN FALLS POWER
CORPORATION TO DISMISS THE APPLICATION
FOR LACK OF JURISDICTION AND FOR
FORUM NON-CONVENIENS
AND NOTICE OF PRESENTATION**

ORIGINAL



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