



Court File No. **VLC-S-S-1812407**
NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ORION FUND JV LIMITED, in its capacity as Collateral Agent
for ORION FUND JV LIMITED and LIBERTY METALS AND
MINING HOLDINGS LLC

PLAINTIFF

AND:

RED EAGLE MINING CORPORATION
REMDC HOLDINGS LIMITED
ORION TITHECO LIMITED, as agent
ROYAL BANK OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-noted registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (c) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (d) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (e) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (f) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Orion Fund JV Limited ("**Orion**") is a company duly incorporated under the laws of Bermuda, with an address for delivery for the purpose of these proceedings of c/o 1600 Cathedral Place, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.
2. The Defendant, Red Eagle Mining Corporation ("**Red Eagle**"), is a company duly incorporated under the laws of the British Columbia with its registered and records office at Suite 2348, 666 Burrard Street, Vancouver BC V6C 2X8.
3. The Defendant, REMDC Holdings Limited ("**REMDC**"), is a company duly incorporated under the laws of British Columbia with its registered and records office at Suite 2348, 666 Burrard Street, Vancouver BC V6C 2X8.
4. At all material times, Orion acted as collateral agent for itself and Liberty Metals and Mining Holdings LLC, both as lenders (the "**Lenders**"), with full authority to act on behalf of the Lenders in respect of various matters, including those which are the subject matter of these proceedings.
5. Orion brings this action as against Red Eagle and REMDC in debt, arising from obligations owing to Orion under the Credit Agreement and Guarantee, as defined below, and seeks to enforce the security granted by Red Eagle and REMDC to Orion for the obligations thereunder, as described in this Notice of Civil Claim.
6. The Defendants, Orion Titheco Limited, as agent, and Royal Bank of Canada are named as Defendants for notice purposes, as each of them are holders of financing statements registered in the British Columbia Personal Property Registry as against Red Leaf and/or REMDC, whose interests may be affected by these proceedings, with addresses noted under and in accordance with the Personal Property Security Act for notice purposes as follows:

- (a) Orion Titheco Limited, Canon's Court, 22 Victoria Street, Hamilton Bermuda
- (b) Royal Bank of Canada, 36 York Mills Road, 4th Floor, Toronto ON M2P 0A4

The Credit Agreement

7. On or about March 24, 2015, Orion and Red Eagle entered into a credit agreement, which was amended and/or restated on July 14, 2015, July 24, 2017, and, by a Second Amended and Restated Credit Agreement, on August 11, 2017 (the **Credit Agreement**) whereby, among other things, Red Eagle sought, and the Lenders agreed to provide and/or continue to provide, credit by way of a loan in the aggregate principal amount of \$60,000,000 USD. As consideration for the loan provided under the terms of the Credit Agreement, Red Eagle agreed to pay, among other things:
- (a) Interest as calculated therein based upon the rates set out in the Reuters LIBOR01 screen (the "**Interest Payments**") along with deferred interest as defined therein ("**Deferred Interest**");
 - (b) Payments as due and owing under an amortization schedule (the "**Amortization Payments**");
 - (c) Recoverable fees and expenses including all reasonable costs of the lenders and their agents, counsel and any receiver or receiver-manager appointed by it; and
 - (d) Payment in full of all of the above obligations upon the loan's maturity, that being April 1, 2019;
- (collectively, the "**Obligations**").
8. Under the terms of the Credit Agreement, the following, *inter alia*, constitute an event of default:
- (a) a failure to pay the Amortization Payments when due;
 - (b) a failure to pay the Interest Payments when due; and
 - (c) a failure to pay the Deferred Interest when due.

Guarantee and Security

9. As security for the Red Eagle's obligations under the Credit Agreement the following security, among other further security, was provided:
- (a) A General Security Agreement by Red Eagle (the "**Red Eagle GSA**"), such Red Eagle GSA being in writing and signed by Red Eagle on or about November 3, 2015, by which Red Eagle granted to Orion a security interest in and to all of its undertaking, property and assets and collateral as enumerated therein, as security for all obligations owing under the Credit Agreement;

- (b) Guarantees, signed by each of the wholly owned subsidiaries of Red Eagle, including by the Defendant, REMDC, such guarantee being in writing and signed by REMDC on or about October 5, 2015 (the "**Guarantee**");
 - (c) A General Security Agreement by REMDC (the "**REMDC GSA**", and collectively with the Red Eagle GSA, the "**GSAs**"), such REMDC GSA being in writing and signed by REMDC on or about November 3, 2015, by which REMDC granted to Orion a security interest in and to all of its undertaking, property and assets and collateral as enumerated therein, as security for all obligations owing under the Credit Agreement;
 - (d) An assignment of material contracts (the "**Assignment of Material Contracts**") granted by Red Eagle to Orion being in writing and signed by Red Eagle on or about November 3, 2015, whereby Red Eagle assigned all right, title and interest in each of the material contracts enumerated therein to Orion as security for the obligations to Orion;
 - (e) A pledge of all equity interests in Red Eagle, and in each guarantors' directly owned subsidiaries, in writing and signed by Red Eagle on or about November 3, 2015 (the "**Share Pledge**"); and
 - (f) A blocked account agreement (the "**Blocked Account Agreement**") in respect of all bank accounts with Red Eagle as account holder held at the Royal Bank of Canada ("**RBC**") whereby, upon activation, RBC agreed to transfer all amount on depot or to the credit of Red Eagle to Orion;
- (collectively, the "**Security**").
10. By virtue of the Guarantee, REMDC irrevocably and absolutely, as principal obligor and not merely as surety, guaranteed and promised to pay on demand of Orion, all of the obligations of Red Eagle, in the same manner and in all respects as Red Eagle is obligated to pay under the terms of the Credit Agreement.
 11. The Express terms of both of the GSAs include that, upon an event of default, Orion was entitled to appoint a receiver to take possession of collateral, to carry on all or any part of the business of the Red Eagle and REMDC, and to dispose of the collateral in such manner and on such terms as are commercially reasonable. To facilitate the foregoing, such receiver is entitle to enter upon, use and occupy all premises of REMDC and Red Eagle.

Default, Forbearance and Further Default

12. Red Eagle defaulted under the terms of the Credit Agreement and Forbearance Agreements when it failed to pay the Amortization Payments and Interest Payments due and payable on April 1, 2018, May 1, 2018 and June 1, 2018, as required.
13. After the initial April 1, 2018 default, Red Eagle requested that the Lenders forbear from exercising their rights and remedies in respect of the default to provide it with time to pursue arrangements to address their current financial and operating issues. Accordingly,

on or about April 1, 2018, the Lenders agreed to forbear to April 30, 2018 (the "**Forbearance Period**") and entered into a written forbearance agreement (the "**Initial Forbearance Agreement**") whereby, among other things, Red Eagle specifically acknowledged and agreed that it was in default of the Credit Agreement as a result of which the Lenders were (and following expiration of the Forbearance Period, would be) entitled to enforce their security which was binding, valid and enforceable and that it secured the obligations under the Credit Agreement.

14. Subsequently, by written agreements dated April 30, 2018, May 15, 2018 and June 22, 2018, the Forbearance Period was extended from time to time, with it finally expiring on June 22, 2018 (with the Initial Forbearance Agreement, the "**Forbearance Agreements**").
15. Upon the expiry of the Forbearance Period, and as a result of the continued events of default, by letters dated November 8, 2018, Orion, through its solicitors, gave notice of default to Red Eagle and REMDC and, by letters dated November 9, 2019, made demand upon each of Red Eagle and REMDC for the amounts due and owing under the terms of the Credit Agreement and Guarantee, that being the sum of \$79,901,288.00 USD as due and owing as of November 8, 2018 (the "**Indebtedness**") and gave Notice of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3.
16. Despite demand, Red Eagle and REMDC have each refused and/or neglected to pay the Indebtedness as justly and truly owed by Red Eagle to Orion under the Credit Agreement, and by REMDC to Orion under the Guarantee, with the time for doing so under the demands having expired.
17. All of the Security, is enforceable as a result of the defaults noted above. Both the Credit Agreement and the GSAs provide that upon an event of default, the Lenders, with Orion as agent, could appoint a Receiver of the property charged by the GSAs, that being all present and after acquired property.

Part 2: RELIEF SOUGHT

18. Judgment against Red Eagle and REMDC, jointly and severally in the amount of:
 - (a) the Canadian currency that is necessary to purchase US\$79,901,288.00 at a chartered bank located in British Columbia at the close of business on the conversion date, as the conversion date is defined in section 1(2) of the *Foreign Money Claims Act*, R.S.B.C. 1996, c. 155 namely on the last day before the date on which a payment of this judgment is made; plus
 - (b) interest from and after November 8, 2018, at the rates and calculated in accordance with and on the amounts set out in the Credit Agreement, to the date of payment or judgment, or in the alternative, interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, Chapter 79 and amendments thereto;
19. A Declaration that the Credit Agreement and GSAs are in default;

20. A Declaration that under the Security, including the GSAs, the Plaintiff is entitled to a fixed and specific charge upon all of the present and after acquired property of Red Eagle and REMDC, including:
 - (a) All shares owned by Red Eagle and REMDC in and to any of their Subsidiaries pursuant to the Share Pledges;
 - (b) All Material Contracts under the Assignment Agreement; and
 - (c) funds transferred under the Blocked Account Agreement.
21. Enforcement of the fixed and specific charges created by the Security, by sale.
22. An Inquiry as to what other charges, and their respective priorities, affect the property comprised in and charged by the Security and in whom and of what part thereof the same are vested;
23. An Accounting as to what is respectively due to such other chargeholders;
24. An Inquiry as to what other debts and liabilities there are, and the amounts thereof, of Red Eagle or REDMC by virtue of any statute, ordinance or municipal regulation payable out of the property comprised in or subject to the charge created by the Security in priority to the monies secured thereby;
25. Possession of the property, rights and assets and undertaking of Red Eagle and REDMC;
26. Appointment of a Receiver and/or a Receiver Manager of the property, rights, assets, businesses and undertakings of Red Eagle and REDMC, charged by the Security, with all proper powers and authorities;
27. Solicitor and own Client Costs; and
28. Such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

29. On the facts set out above, the Plaintiff is entitled to the relief sought, including but not limited to:
 - (a) Judgment for the amounts due and owing to it under the contractual terms of the Credit Agreement and Guarantee;
 - (b) Declaratory relief as may be necessary for enforcement of its valid and enforceable security; and
 - (c) the appointment of a Receiver and/or Receiver Manager over the assets and undertakings of Red Eagle and REDMC pursuant to the terms of the GSAs specifically, and the Security generally, as executed by each of them.
30. The Plaintiff relies upon Rule 10-2 of the *Supreme Court Civil Rules*, s. 34 of the *Law and Equity Act*, s. 39 of the *Law and Equity Act*, ss. 63 and 66 of the *Personal Property*

Security Act, and s. 47 of the *Bankruptcy and Insolvency Act*, and submits that it is just and equitable to appoint a Receiver over the assets and undertaking of Red Eagle.

The Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Heather MB Ferris)

Fax number address for service is: (604) 694-2957

E-mail address for service is: hferris@lawsonlundell.com

Place of Trial: Vancouver, British Columbia

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 19 day of November, 2018.


Lawson Lundell LLP
Solicitors for the Plaintiff

This Notice of Civil Claim is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff's claim is solely for recovery of money specified or ascertainable, and enforcement of security in respect of that recovery.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

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ROYAL BANK OF CANADA

DEFENDANTS

NOTICE OF CIVIL CLAIM



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V6C 3L2
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