



This is the 1<sup>st</sup> Affidavit of Jon Lamb  
in this case and was made on November 19, 2018

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

**AFFIDAVIT**

I, Jon Lamb, of 1211 Avenue of the Americas, in the City of New York, in the  
State of New York, USA, MAKE OATH AND SWEAR THAT:

1. I am the Portfolio Manager of the Investment Manager of the Plaintiff herein, and  
as such have personal knowledge of the matters herein deposed to, except where stated to be  
based on information and belief, in which case I verily believe them to be true.
2. The documents referenced in this affidavit are being appended to an affidavit  
sworn by Amanda Simister in these proceedings. I have reviewed that affidavit and documents  
attached thereto and confirm that, other than the documents which are noted to be printouts from  
available public websites, the documents are true copies of documents maintained by the Plaintiff  
in its ordinary course of business and that the signatures thereon are, to the best of my  
information and belief, signatures of the parties as noted in respect of same, each of whom were  
authorized to sign the document.

### The Parties and Background

3. 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.

4. 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.

5. Red Eagle is a publicly traded company, listed on the TSX under RDEMF

6. 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.

7. Red Eagle is a gold exploration and development corporation, with ownership of various interests in, either directly or through wholly owned subsidiaries, various mining operations including an approximate 100 square kilometer underground gold mine located in the Antioquia Batholith, near the town of Santa Rosa de Osos, as described in a technical report as "Amended NI 43-101 Technical Report Feasibility Study of the Santa Rosa Gold Project" dated October 27, 2014 (the "**Santa Rosa Gold Project**"), a historically known gold mine.

8. REMDC is a wholly owned subsidiary of Red Eagle. REMDC is the sole owner Red Eagle Mining De Colombia S.A.S ("**Red Eagle (Colombia)**"), the Colombian Company that owns, among other things, various interests in and to the Santa Rosa Gold Project, including mining titles, either current or pending, in respect of same.

9. The Defendants, Orion Titheco Limited, as agent, and Royal Bank of Canada are each holders of financing statements registered in the British Columbia Personal Property Registry as against Red Eagle and/or REMDC, whose interests may be affected by these proceedings.

### The Credit Agreement

10. In or about 2015, Red Eagle sought financing for its exploration and development of the Santa Rosa Gold Project and approached Orion and Liberty Metals and Mining Holdings LLC (the "**Lenders**") to provide financing for those purposes. The overall business plan was to continue to develop the explore and develop the Santa Rosa Gold Project as a profitable and producing mining operation, which included the engagement of a construction management and engineering firm, Lycopodium Minerals Canada Ltd., to undertake the engineering, procurement and project management services, and restructuring some of its corporate holding, for example, by merging with one of Red Eagle's subsidiaries at the time, Red Eagle Exploration.

11. Initially, it was believed that the proposed development could result in gold production starting in the second half of 2016.

12. Accordingly, the Lenders agreed to provide financing and eventually entered into a credit agreement dated March 24, 2015 for that purpose, and appointed Orion as collateral agent for 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. By that agreement, Orion has the authority to bring these proceedings in its name, as agent for the Lenders.

13. Unfortunately, although the initial late 2016 production deadline was met, Red Eagle was not able to sustain production in a manner profitable enough to meet its financial obligations under the Credit Agreement. In addition, a shutdown of several months was necessary for additional structural work to be done to improve access to the mining stopes and improve the structural integrity of the mine. As a result of the shutdown the Company was unable to make the scheduled principle and interest payments.

14. By the end of 2017, significant work had been undertaken with almost 5,300m of the mine shafts being completed, resulting in completion of 18 working attack ramps, with the re-stated intention to start production in early 2018.

15. Through the course of Red Eagle's development efforts, the credit agreement as initially entered into on or about March 24, 2015 was amended and/or restated on or about each

of July 14, 2015, July 24, 2017, and, by a Second Amended and Restated Credit Agreement, on August 11, 2017 (the **Credit Agreement**”).

16. By the terms of the Credit Agreement, among other things, 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"**).

### Guarantee and Security

17. In addition, 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) Blocked account agreement (the "**Blocked Account Agreement**") in respect of all bank accounts with Red Eagle and REDMC as account holders 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**").

18. 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.

19. The Express terms of the Credit Agreement and 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 entitled to enter upon, use and occupy all premises of REMDC and Red Eagle.

**Default, Forbearance and Further Default**

20. Under the terms of the Credit Agreement, the following, among other things, 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.

21. Red Eagle defaulted under the terms of the Credit Agreement when it failed to pay the Amortization Payment and Interest Payment due and payable on April 1, 2018.

22. 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.

23. 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**").

24. 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, 2018, 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.

25. Despite demand for payment being issued, 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.

26. Both the Red Eagle GSA and REMDC GSA, and all of the Security, is enforceable as a result of the defaults noted above. Both the Credit Agreement and the GSA provide that upon an event of default, Orion could appoint a Receiver of the property charged by the GSA, that being all present and after acquired property.

**Subject Application/Enforcement of Security:**

27. Since issuing the demand for payment and Notice of Intention to Enforce Security, Red Eagle has taken steps that indicate that it will be ceasing operations. Such actions are very concerning for the Lenders as it could impair their realization under the Security.

28. On November 9, 2018, Red Eagle issued the following press release:

VANCOUVER, British Columbia, Nov. 09, 2018 (GLOBE NEWSWIRE) -- **Red Eagle Mining Corporation (TSX: R, BVL: R, OTCQX: RDEMF)** advises that the secured lenders have given default notice and a demand letter under the secured credit facility and advised of their intention to appoint FTI Consulting as receiver over Red Eagle Mining's assets. Red Eagle Mining had negotiated a restructuring, announced August 24, 2018 under which the secured lenders would

write off a significant part of their debt to enable Red Eagle Mining to recommence operations, but the restructuring was contingent upon a US\$38 million equity financing from Annibale SAC, personally guaranteed by its principal Fernando Palazuelo. Annibale defaulted on that commitment and as a result, the restructuring could not proceed.

29. Subsequently, on or about November 13, 2018, I learned that Red Eagle's Website, which had been [www.redeaglemining.com](http://www.redeaglemining.com), was taken offline and, it would appear from that, that they are no longer trading or doing business.

30. The Lenders have engaged FTI Consulting Inc. ("FTI") as their financial advisor in this matter. I am aware that, in that capacity, FTI has had various meetings and discussion with Red Eagle and its offices.

31. Based on my own discussions with Red Eagle, information obtained from FTI and the facts set out above, it is apparent that Red Eagle's liquidity crisis and its failure to obtain additional financing has resulted in the Santa Rosa Gold Project being placed on care and maintenance at a cost of approximately \$1M (US) per month. Red Eagle no longer has funds available to pay for that.

32. I have been advised by Toni Vanderlaan of FTI Consulting, and do verily believe that:

- (a) Payroll was only funded until November 15, 2018;
- (b) Canadian employees are working in Columbia, with contracts that include significant obligations upon their termination - some of these employees have not been paid this month at all; and
- (c) There is no revenue being generated by any of the Red Eagle Companies, however, there are anticipated Value Added Tax refunds which are owing to the Red Eagle Companies;

33. Thus, to the best of my information and belief, Red Eagle is no longer capable of, or intending to, continue any of its operations, including further development of the mine assets in Colombia. Accordingly, in order to avoid any risk of the material contracts being terminated



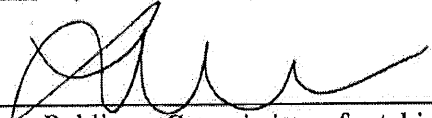
which provide value in respect of the mine itself, the Lenders need to be in a position to deal with the collateral under the Security, namely, and without limitation:

- (a) All material contracts under the Assignments of Material Contracts, which would include leases of the Vancouver premises if determined to have value;
- (b) All shares in the Red Eagle, and REDMC subsidiaries, including those held in Red Eagle (Colombia) so as to realize upon the Santa Rosa Gold Project as developed to date; and
- (c) All choses in action, including proposed litigation for damages for breach of a commitment to refinance.

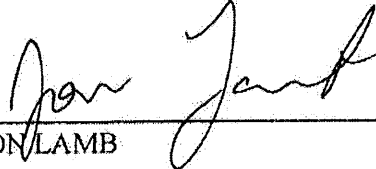
34. As such, the Lenders seek to appoint a Receiver as is contemplated under the terms of the Credit Agreement and GSAs to take possession of the assets, and to realize upon same.

35. FTI Consulting, Inc. has consented to act as Receiver.

SWORN BEFORE ME at the City of New York, in the State of New York, USA, this 19th day of November, 2018.



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A Notary Public or Commissioner for taking Affidavits for and in the State of New York



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JON LAMB

[STAMP TO BE AFFIXED:]

LIMOGRE NISSAN  
 NOTARY PUBLIC,  
 STATE OF NEW YORK  
 No. 31-5007524  
 Qualified in New York County  
 Commission Expires May 8, 2019

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AFFIDAVIT

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