Court File No. CV-14-274

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

2403177 ONTARIO INC.

Applicant

and

BENDING LAKE IRON GROUP LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. c. 43 AS AMENDED

RESPONDING PARTY'S FACTUM

December 23, 2015

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RESPONDING PARTY'S FACTUM

ISSUES:

a) Whether to grant the relief requested by the Respondent BLIG in recognition of the positive efforts of BLIG to refinance and restructure and the deceit evidenced by LHR with respect to a restructuring of BLIG;

b) The appropriateness of the granting of a sealing Order;

PART I - SUMMARY OF FACTS

Overview:

1. The Respondent, BLIG (hereinafter referred to as “BLIG”), is seeking an Order that the Receiver provide the Respondent 90 days within which to arrange funding that is equal to an amount that Legacy Hill Resources (hereinafter referred to as “LHR”) was prepared to pay and the Receiver was prepared to accept as evidenced in the November 27, 2015, agreement for purchase of assets signed by the Receiver and a representative for LHR.

2. The Respondent is also seeking an Order for permission to provide potential financers of the amount that must be raised within this time period.

3. The Respondent is also seeking an Order that the matter be adjourned for a period of 90 days following which both the Receiver and the Respondent will be required to file a further report with the court regarding the proposed transaction.

4. It matters not that some of the confidential information contained in the data that was provided by BLIG’s representatives to LHR might have been available from the Receiver pursuant to the Receiver’s Order is not the issue. The issue is what steps did LHR take in order to form a relationship with BLIG before initiating any contact with the Receiver.

5. The critical period of time for review by this Honourable Court is the steps that were taken by LHR in conjunction with BLIG directed towards the refinancing of the company in discussions with the Receiver.

6. This motion is for various relief for the purpose of permitting the Respondent with the time required to properly deal with the situation that the Respondent corporation finds itself in as a result of relying upon the representation, documents, emails and conversations between BLIG representatives and LHR.

7. As the Affidavit evidence makes very clear, BLIG has been actively pursuing the development of the Josephine Cone Mine site for over a decade in various forms.

8. Henry Wetelainen is the President and CEO of Bending Lake Iron Group Limited ("BLIG").

9. At all times it was the belief of Henry Wetelainen that Legacy Hill Resources Limited ("LHR") was committed to working with the existing company of BLIG to refinance the Josephine Cone Mine project.

10. The first contact with LHR on February 02, 2015, resulted in Andrew Malim, Director, Project Development & Finance writing to representatives of BLIG and confirming that:

> "We are looking forward to looking at ways we can work together"[1]

11. Many activities were undertaken by representatives of BLIG following the initial contact with LRH. All of these activities were for the clear purpose of refinancing BLIG with the assistance of LHR.[2]

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[1] Affidavit of Henry Wetelainen dated December 17, 2015, para. 5
[2] Affidavit of Henry Wetelainen dated December 17, 2015, para. 5 - 13

12. As early as March 10, 2015 LHR's representative confirmed the nature of the relationship between BLIG and LHR. As Andrew Malim wrote to Henry Wetelainen on March 10, 2015:

> "**We would be pleased to work with you to fund and develop your family property.** (emphasis added) We understand that the company is in receivership but with goodwill and understanding on all sides, we can come up with a workable solution, I am sure." [3]

13. On March 12, 2015 a Confidentiality Agreement (Reciprocal Non-Disclosure) ("CA/NDA") was signed between LHR and BLIG.[4]

14. Throughout March 2015 Henry Wetelainen acted on behalf of BLIG in dealing with LHR for the purpose of refinancing BLIG.

15. As a result of Henry Wetelainen properly informing the Receiver of the existence of LHR, the Receiver suggested to Henry Wetelainen that the Receiver might become involved.

16. Once the CA/NDA was signed on behalf of BLIG, as well as LHR, BLIG began the provision of confidential information to LHR for the sole purpose of providing LHR with appropriate information to continue with the refinancing of BLIG efforts.

[3] Affidavit of Henry Wetelainen dated December 17, 2015, para.14
[4] Affidavit of Henry Wetelainen dated December 17, 2015, para. 21 - 26

17. At no time throughout this process following the Receiver's orders up until the date of this Factum has Henry Wetelainen ever worked outside of the parameters of BLIG in an effort to refinance BLIG as evidenced in the Affidavits of Henry Wetelainen sworn December 09, 2015 and December 17, 2015, he never considered attempting to deceive the creditors, shareholders, stakeholders and affected Aboriginal communities.

18. Following the provision of the confidential information to LHR and continuing discussions, Mr. Wetelainen provided the Receiver with information regarding LHR.

19. The information that was being disclosed to LHR was very important to all stakeholders in BLIG, including but not limited to 2403177 Ontario Inc., all the secured creditors, all the unsecured creditors, all officers of the corporation, all shareholders of the corporation, the Aboriginal communities identified in the Project Description and the Aboriginal communities for whom a Royalty Agreement was completed in 2008.[5]

20. In providing the confidential information to representatives of LHR, Mr. Wetelainen never intended nor was he concerned that it would be misused by LHR.

21. Pursuant to the CA/NDA a fiduciary duty attached to both LHR and BLIG not to misuse the confidential information to the detriment of BLIG.

22. As President and CEO of BLIG, Henry Wetelainen continued to develop alternative utilizations for the property, such as a green steelwork, green greenhousing and Bending Power Corp. Although this information was relayed to the Receiver, it was dismissed as being foolish.

[5] Affidavit of Henry Wetelainen dated December 17, 2015, para. 36

23. This confidential information was provided to LHR and it clearly has been utilized to the detriment of BLIG in LHR seeking an "assets only" purchase.[6]

24. It was Henry Wetelainen and not the Receiver who dealt exclusively with LHR commencing on February 02, 2015 for the purpose of refinancing the project.[7]

25. Henry Wetelainen on behalf of BLIG pursued a meeting with Stuart Livingston and James McLean, the principles of 2403177 Ontario Inc. to determine in conjunction with the major creditors how best to proceed with the new found interest of LHR.[8]

26. It was not until April 14, 2015 that Henry Wetelainen was informed by the Receiver for the first time that the Receiver had been liaising with LHR. This did not alarm Henry Wetelainen given the nature of the relationship between BLIG and LHR.[9]

27. Henry Wetelainen and representatives of BLIG were very encouraged when the Receiver confirmed that the Letter of Intent had been provided by Resource Development Partners Limited ("RDP"), which indicated that LHR would be providing technical advice while RDP was sourcing capital.[10]

[6] Affidavit of Henry Wetelainen dated December 17, 2015, para. 42 - 54
[7] Affidavit of Henry Wetelainen dated December 17, 2015, para. 57
[8] Affidavit of Henry Wetelainen dated December 17, 2015, para. 58
[9] Affidavit of Henry Wetelainen dated December 17, 2015, para. 60
[10] Affidavit of Henry Wetelainen dated December 17, 2015, para. 60 - 61

28. Through the balance of Henry Wetelainen's involvement with LHR, Henry Wetelainen always worked in a timely fashion to provide any information requested, whether it was directly from LHR or through the Receiver. Henry Wetelainen did so knowing that LHR and BLIG were working together collectively and jointly to refinance BLIG and the Receivership.[11]

29. The Order provided that the Receiver was not appointed as Manager of the Debtor and was not entitled to take possession or control of the property or to operate the business of the Debtor or to employ any of the Debtor's employees.[12]

30. The Order (appointing Receiver) of the Honourable Justice D.C. Shaw dated September 11, 2015 expressly confirmed that only subject to the terms of the said Order or any further Order of the Court, the property shall remain in the possession and control of the Debtor.[13]

31. While the Receiver was empowered and authorized to do any of the 15 enumerated steps set out in the Order (appointing Receiver) of the Honourable Justice D.C. Shaw dated September 11, 2015, the Receiver was not obligated to do any of the same.

32. At all times during the Receivership, the property remained in the possession and control of the Debtor.

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[11] Affidavit of Henry Wetelainen dated December 17, 2015, para. 69 - 73
[12] Order (appointing Receiver) of the Honourable Justice D. C. Shaw, Court File No. CV-14-274, September 11, 2014, para 3
[13] Order (appointing Receiver) of the Honourable Justice D. C. Shaw, Court File No. CV-14-274, September 11, 2014, para 3

33. The Receiver was not entitled to sell, convey, transfer, lease or assign the property or any part or parts thereof out of the ordinary course of business without the approval of this Honourable Court in respect of any transaction not exceeding $50,000.[14]

34. The Receiver was entitled to report to, meet with and discuss with such affected persons as the Receiver deems appropriate on all matters relating to the property and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable.

35. The Court specifically ordered that the making of the Receiver's Order did not vest in the Receiver the care, ownership, control, charge, occupation, possession or management of any of the property or the business or operations of the Debtor.[15]

36. The Order made clear that the Receiver was entitled to apply to this Court for advice and directions in the discharge of its powers and duties hereunder from time to time.[16]

37. Pursuant to The Order (appointing Receiver) of the Honourable Justice D.C. Shaw dated September 11, 2015, the Receiver obtained on the consent of the Respondent the sales and investor solicitation process order dated November 27, 2014 and endorsed by the Honourable Madam Justice Pierce. The Order of the Honourable Madam Justice Pierce dated November 27, 2014 makes clear that BLIG consented to the proposed form of the Order and as such the Court granted the Order.

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[14] Order (appointing Receiver) of the Honourable Justice D. C. Shaw, Court File No. CV-14-274, September 11, 2014, para 3(h)
[15] Order (appointing Receiver) of the Honourable Justice D. C. Shaw, Court File No. CV-14-274, September 11, 2014, para 4
[16] Order (appointing Receiver) of the Honourable Justice D. C. Shaw, Court File No. CV-14-274, September 11, 2014, para 27

38. The Receiver conducted the sales and investor solicitation process as set out in the Order of the Honourable Madame Justice Pierce dated November 27, 2014.

39. The Receiver provided notice to parties of an extension of the date upon which permitted the Receiver to extend the timelines set forth in the SISP for a period of up to 30 days. Any additional time extensions required further Order of this Court.[17]

40. The SISP commenced on or before December 12, 2014 and required that all interested parties would have until 4 p.m. on February 27, 2015, to submit a binding offer and proposal, which was required to include a cash deposit to 10 percent of the total purchase.

41. The Receiver did in fact extend the SISP closing date from February 27, 2015 to March 27, 2015 as authorized by this Honourable Court.

42. On March 27, 2015, the jurisdiction of the Court to conduct an SISP terminated. The Receiver failed to re-attend at Court and obtain any further extensions. Accordingly, the SISP ended on March 27, 2015. The evidence of the representatives of the Respondent makes clear that they relied upon the termination of the SISP and were well aware that pursuant to the Court Order the SISP was not continued in that the Receiver to make such request.

43. The SISP was referenced in the first report to the Court of A. Farber & Partners Inc. in its capacity as court appointed Receiver of BLIG on November 18, 2014.

[17] Order of the Honourable Madam Justice Pierce, November 27, 2014, para 4.

44. In the report, at paragraph 29, the Receiver confirmed to the Court and through the report to BLIG as a Respondent that:

> "the Receiver has determined that the market should be canvassed through a court supervised sales process in order to attempt to effect a restructuring or same of the Debtor and its Property"[18]

45. The Respondent representative properly relied upon the termination of the SISP and the utilization of a "APA". The Receiver failed to reattend to request an extension of the SISP, and in doing so failed to provide any further notice that they intended to determine or work with a process that would result in an APA.

46. In the Affidavit of Stuart Livingston, the President, Secretary and Sole Director of the Applicant 2403177 Ontario Inc., made clear that included in the process of appointing of Receiver that the process may include, without limitation:

a) undertaking a solicitation process for potential investors in order to refinance or recapitalize the business of the Debtor for the benefit of all stakeholders;

b) undertaking such other actions as deemed advisable by the Receiver to obtain the greatest benefit/value to the Debtor's stakeholders.[19]

47. The Respondent and its representatives relied upon this information, especially so once the SISP was not renewed and the Receiver failed to return to Court for such a process.

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[18] First Report of the Receiver, November 18, 2014, para 29
[19] Affidavit of C. Stuart Livingston dated July 22, 2014, para 39

48. The Debtor's representatives, Henry Wetelainen, Dawn McKay, Jay Mackie, Jack Falkins and others, continued to work with the Receiver throughout 2014 and 2015 pursuant to the Receiving Order as well as the SISP Order of November 27, 2015. The management of company was delegated to Henry Wetelainen, President and CEO of BLIG and it remained so pursuant to the Order (appointing Receiver) of the Honourable Justice D.C. Shaw of September 11, 2014.

49. As the Affidavit of Henry Wetelainen makes clear, at all times in dealings with LHR the Respondents relied upon the CA/NDA signed on March 12, 2015, to outline the definition of roles and responsibilities of the parties.

50. Pursuant to the indoor management rule, the Respondent representatives were entitled to continue to solicit assistance in the process as stated by Stuart Livingston of soliciting for potential investors in order to refinance or recapitalize the business of the Debtor for the benefit of all stakeholders with the concurrent understanding that the representatives of the Respondent undertook other actions as deemed advisable to obtain the greatest benefit/value to the Debtor's stakeholders.

51. As Mr. Livingston made clear in his Affidavit to support the Order appointing the Receiver, he believed that the appointment of the Receiver over the Debtor "will enhance the prospect of recovery by the Secured Lenders and protect all stakeholders".[20]

[20] Affidavit of C. Stuart Livingston dated July 22, 2014, para 44.

52. Although Mr. Paul Denton swears an Affidavit on behalf of the Receiver dated November 30, 2015, that states that the Asset Purchase Agreement presently before the Court is a result of the SISP it is important for this Court to note that the SISP terminated on March 27, 2015. At that time, LHR was dealing only with BLIG representatives and not with the Receiver. In fact, the Receiver did not become involved with LHR until well into April of 2015.

Third Receiver's Report:

53. Although the Receiver dealt with the requirement to file the Third Receiver's Report as early as May 7, 2015, this report was not in fact filed until November 30, 2015.

54. The detailed invoice of Dentons Canada LLP, lawyers for A. Farber & Partners Inc., confirms that on June 23, 2015, discussions occurred between the Receiver and their counsel with respect to "move matters forward and whether any need to move before court at present".[21]

55. Discussions with the Receiver regarding the SISP and court reporting were undertaken with their counsel on June 29, 2015. Clearly, the Receiver was aware that they had failed to obtain an extension of the SISP from March 27, 2015.[22]

56. The invoice of Dentons Canada LLP, lawyers for the Receiver, makes clear that on August 18, 2015, there was a meeting between the Receiver and Stuart Livingston.[23]

[21] Applicant's Motion Record, Tab 5 a) Invoice Detail June 23, 2015
[22] Applicant's Motion Record, Tab 5 a) Invoice Detail June 29, 2015
[23] Applicant's Motion Record, Tab 5 a) Invoice Detail August 18, 2015

57. The evidence set out in the invoice for the month of September 2015 makes very clear that the Receiver was dealing with LHR at the same time that LHR and the Receiver were requesting further cooperation from representatives of BLIG [24]. At that time BLIG's representatives believed that LHR was working with BLIG to refinance.

58. Counsel for the Receiver did not reference an Asset Purchase Agreement in their dockets until the initial entry of October 1, 2015. In fact, counsel drafted an Asset Purchase Agreement on October 1, 2015. There was no notice of this provided to BLIG.

59. As early as October 7, 2015, the Receiver was working with their counsel regarding a Court Motion and "**stakeholder communication of Legacy Hill transaction**"[25]

60. It would appear from a review of both the Receiver and Receiver's counsel's docket that in September and October 2015 LHR, in violation of their CA and the representations to BLIG, began to commence a process to improperly appropriate the assets of BLIG.

61. Despite the October 7, 2015, reference to:

> "stakeholder communication of Legacy Hill transaction"

In their dockets, there was no notice of the transaction provided to any stakeholders until November 26, 2015, some eight weeks later. During this entire period of time, BLIG was acting under a CA/NDA that the President of BLIG properly signed on behalf of BLIG. Such action was not prohibited by the Receiver's Order and in fact, given the Receiver's

[24] Applicant's Motion Record, Tab 5 a) Invoice Detail September 30, 2015
[25] Applicant's Motion Record, Tab 5 a) Invoice Detail October 7, 2015

Order, the SISP as well as the information contained within the Affidavit of Stuart Livingston, such conduct was appropriate and was intended solely for the purpose of benefiting the Respondent BLIG and its creditors, shareholders stakeholders and affected Aboriginal communities.

The Receiver's Knowledge of Legacy Hill Resources Limited:

62. As set out above, as a result of the initial contact, the CA/NDA were signed and confidential information exchanged long before the Receiver knew anything whatsoever about the results of BLIG's efforts with LHR in attempting to attract a financial partner to assist in the refinancing of BLIG in order to terminate the Receivership and move on with the development of the Josephine Cone Mine project.[26]

63. It is incorrect for the Receiver to suggest that the Receiver previously provided information to LHR and such information was all that LHR received.[27]

[26] Affidavit of Henry Wetelainen dated December 17, 2015, para. 76
[27] Affidavit of Henry Wetelainen dated December 17, 2015, para. 79

Henry Wetelainen and Dawn McKay's Actions With Respect to Fiduciary Duty to Other Shareholders:

64. Henry Wetelainen and Dawn McKay's actions have always been extremely respectful of their fiduciary duty to other shareholders and at no time did Henry Wetelainen ever consider demolishing the trusted relationship he had with the majority of BLIG creditors, shareholders, stakeholders and the Aboriginal communities that have supported BLIG in the development, as well as the Aboriginal communities referenced that benefit from the Royalty Agreement in place since 2008.[28]

65. Henry Wetelainen has not had any discussions with any party to promote the purchase of the assets only. All of Henry Wetelainen's discussions and efforts on behalf of BLIG were for the purposes of obtaining a restructuring/refinancing and the termination of the Receivership with the concurrent benefit to BLIG, its creditors, shareholders, stakeholders and affected Aboriginal communities.[29]

Visit to the Josephine Cone Mine Site – June 2015:

66. During May 2015, the Receiver worked with Henry Wetelainen in order to have a joint visit between representatives of LHR and the Receiver to the mine site in June of 2015. Saradhi Rajan, Managing Director or LHR and Andrew Malim of LHR attended at the Josephine Cone Mine site in June of 2015. Also in attendance were Henry Wetelainen and the Receiver's representatives.[30]

[28] Affidavit of Henry Wetelainen dated December 17, 2015, para. 90
[29] Affidavit of Henry Wetelainen dated December 17, 2015, para. 90
[30] Affidavit of Henry Wetelainen dated December 17, 2015, para. 95 - 99

67. The Receiver very clearly was involved :

> "I am reaching out and copying the group to facilitate free exchange should further particulars need to be clarified between the parties."[31]

68. During the visit to the Josephine Cone Mine site, Henry Wetelainen on behalf of BLIG provided additional confidential information to LHR. This information consisted of items such as:

i) "the open pit sample area
ii) the old drill holes
iii) some of the new drill holes
iv) the location of the actual deposit
v) the location of the power and service corridor
vi) the location of the transportation link to the Trans Canada highway
vii) the area that would be utilized for development
viii) explained the very close relationship between BLIG and the Aboriginal communities impacted by the development as well as my personal history as a member of the Wabigoon Aboriginal community both as a Metis individual and also as a formal member of the Wabigoon First Nation
ix) provided further information with respect to the development of alternative energy sources
x) provided information and conducted a tour of the area of the adjacent land that were held by other companies that are controlled by various shareholders of BLIG
xi) discussed the ability of BLIG to work with any objector to the development of the Josephine Cone Mine as evidenced in the Federal Project Description"[32]

[31] Affidavit of Henry Wetelainen dated December 17, 2015, para. 99
[32] Affidavit of Henry Wetelainen dated December 17, 2015, para. 108

69. The confidential information provided by BLIG to LHR in March and April of 2015 and during the visit to the mine site in June of 2015 was provided to LHR by BLIG based upon the clear understanding of BLIG's representatives that LHR was working to assist BLIG in refinancing the Josephine Cone Mine project.[33]

Secret Agreement Between the Receiver and Legacy Hill Resources Limited:

70. The Receiver did not disclose to representatives of BLIG that LHR executed a non-binding Letter of Intent on September 30, 2015. At that time, representatives of BLIG continued to work in conjunction with LHR's questions and the Receiver's efforts towards a refinancing of the mine.

71. Until the filing of the Notice of Motion by the Receiver returnable December 10, 2015, Henry Wetelainen had no idea whatsoever that the Receiver was considering an "assets only" agreement.[34]

The Sales and Investor Solicitation Process ("SISP"):

72. The SISP granted the Receiver authorization and jurisdiction to complete a process by February 27, 2015. Pursuant to the Order of the Court, the Receiver was entitled to one extension. This extension was sought and the Receiver allowed the SISP to expire as of March 27, 2015. At this time the Receiver did not have any knowledge whatsoever of LHR.[35]

[33] Affidavit of Henry Wetelainen dated December 17, 2015, para. 113
[34] Affidavit of Henry Wetelainen dated December 17, 2015
[35] Affidavit of Henry Wetelainen dated December 17, 2015, para. 137 - 145

Bending Lake Iron Group Limited's Request and Confirmation of a Three Year Extension to Complete the Federal Environmental Assessment on the Josephine Cone Mine Project:

73. In May of 2015, BLIG requested permission of the Receiver to file a request for a 3 year extension of the CEAA Environmental Assessment being conducted on the Josephine Cone Mine Project.

74. The documentation provided to the Receiver regarding this process made clear that the BLIG representatives were intending to continue the CEAA Environmental Assessment, in that BLIG would emerge from the present Receivership with renewed finances that would permit and expansion of the continuation of the overall involvement in the CEAA Environmental Assessment that was presently underway.[36]

Subsequent Plan for Second Follow Up Visit to Josephine Cone Mine Site:

75. The Receiver wrote to representatives of BLIG on July 03, 2015 confirming that LHR wished to continue with a second trip to the Josephine Cone Mine site for the purpose of a more technical trip with a team of four to five people who would like to meet with representatives BLIG and have access to the mine site.[37]

76. The Receiver confirmed to BLIG representatives in this email that LHR believed that once they had completed this round of due diligence they could formulate a firm proposal/offer.[38]

[36] Affidavit of Henry Wetelainen dated December 17, 2015, para. 160 - 170
[37] Affidavit of Henry Wetelainen dated December 17, 2015, para. 171
[38] Affidavit of Henry Wetelainen dated December 17, 2015, para. 171

Bending Lake Iron Group Limited's Representatives to Continue With the Josephine Cone Mine Project:

77. It is the unrefuted evidence of Henry Wetelainen that he never considered, at any time, working towards any proposal with respect to BLIG that did not provide for refinancing of BLIG to the benefit of all creditors, shareholders, stakeholders and affected Aboriginal communities. Although there are suggestions in the Receiver's Report that Henry Wetelainen could not raise sufficient funds or capital to submit a proposal, the opposite is correct. Henry Wetelainen fully and quite properly believed that LHR was working with BLIG in order to submit a proposal for the refinancing of BLIG.[39]

78. There are approximately 160 shareholders and 33,500,000 shares issued and outstanding.[40]

Conduct of Legacy Hill Resources Limited:

79. Throughout the negotiations with LHR, as well as at the commencement of the relationship between BLIG and LHR, it is clear that LHR informed BLIG and committed to BLIG that they would work with BLIG in order to refinance and restructure the existing company in the ongoing development of the Josephine Cone Mine site.

80. Suddenly and without any advanced notice, it is now apparent that LHR secretly began to meet with the Receiver in September of 2015 and failed to provide BLIG with any notice of the same. This is a breach of a fiduciary duty owed to BLIG by LHR.

[39] Affidavit of Henry Wetelainen dated December 17, 2015, para. 185 - 193
[40] Affidavit of Henry Wetelainen dated December 17, 2015, para. 194

PART II – STATEMENT OF ISSUES, LAW & AUTHORITIES:

81. In *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) the Court has indicated that there are four factors are identified as considerations for the court in considering whether a receiver who has sold a property acted properly."[41]

Factor 1 of *Royal Bank v. Soundair Corp et al.*:

> **"1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently."**[42]

82. The shareholders of BLIG, as represented by the President, pursuant to the President's fiduciary duty to the shareholders, attempted to obtain financing from LHR that would permit BLIG to continue to develop as an Aboriginally controlled mining development in Northern Ontario.

Factor 2 of Royal Bank v. Soundair Corp et al.:

> **"2. It should consider the interests of all parties"**[43]

83. The secured creditor does support the settlement, and it does so with the knowledge that it will realize a significant shortfall. The conundrum that exists in this particular situation is that the secured creditors have in excess of one million shares in BLIG.

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[41] *Royal Bank v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (C.A.), para. 16, Book of Authorities of A. Farber & Partners Inc., Tab 1
[42] *Royal Bank v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (C.A.), para. 16, Book of Authorities of A. Farber & Partners Inc., Tab 1
[43] *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205, Book of Authorities of A. Farber & Partners Inc., Tab 1

84. It is submitted that it is incumbent upon the secured creditor to be candid with the Court through the Receiver in evidencing the entire benefit that the secured creditor will receive as a result of the transaction that the Receiver promotes to this Court.

85. The secured creditor has failed to do so. It is noted that in the original application the secured creditor supplied an Affidavit with respect to the history of the property and the financing. It is respectfully submitted that there is an adverse inference to be drawn from the fact that the secured creditors, particularly Mr. Stuart Livingston, have not supplied this Court with an Affidavit confirming any evidence regarding the proposed transaction.

86. In order to submit to the Court that the secured creditor will realize any shortfall there must be full disclosure to the Court. In this case, there has not been full disclosure. There is an Asset Purchase Agreement in the Receiver's motion material, but the Receiver fails to make the Court aware of the conditions in the Asset Purchase Agreement that will accrue to the benefit of the secured creditor.

87. The Receiver owes a duty to all the shareholders to treat them fairly. It is respectfully submitted that it is totally unfair for the Receiver to work as closely as it did with BLIG with the concurrent result that BLIG was lulled into a sense of security that there would be refinancing obtained and the company would emerge from Receivership stronger with less debt and with partners that were interested in developing the Josephine Cone Mine site and working in conjunction with the Aboriginal shareholders and their respective Aboriginal communities.

The Transaction is in the Interest of All Parties:

88. It is evidenced by the action of LHR in violating its fiduciary duty to BLIG that was created as a result of the confidential information that was provided by BLIG to LHR that this transaction is not in the best interest of all parties in these proceedings. The Receiver owed a duty to all stakeholders and its primary task is to maximize the return for the creditors; however, a secondary aspect is to in fact act in the best interest of all stakeholders in the event that is possible.

Fiduciary Duty of Legacy Hill Resources Limited to Bending Lake Iron Group Limited:

89. It is clear that when a mining exploration company makes representations to another mining company that involves confidential information with respect to the development a mining property that there is a fiduciary relationship created and also a duty of confidentiality.

90. While LHR and BLIG had not concluded a binding contract the clear incontrovertible intension of LHR in their own words was to:

> "We would be pleased to work with you to fund and develop your family property. We understand that the company is in receivership but with good will and understanding on all sides, we can come up with a workable solution, **I am sure**. (emphasis added)"

91. The provision of confidential information to LHR prior to LHR having any dealings with the Receiver in this matter created a duty of confidence owed to BLIG.

92. The test for whether there has been a breach of confidence involves establishing three elements:

That the information conveyed was confidential:

93. It is clear from the CA/NDA provided to BLIG by LHR prior to any involvement of the Receiver and further, the request by LHR for this information as a component of moving forward in negotiating a restructuring, refinancing was in fact confidential.

That the information was communicated:

94. Clearly the CA/NDA that was provided by LHR to BLIG in advance of the release of the confidential information to LHR is evidence that the communications were intended to be confidential and were communicated in confidence.

That the information was misused by the party to whom it was communicated:

95. The evidence is very clear that LHR utilized the information in order to complete due diligence with respect to the refinancing /restructuring of BLIG.

96. As a result of utilizing the confidential information that it received from BLIG, LHR revised it's position without notice to BLIG and thereby violated its duty of confidentiality, as well as the fiduciary duty to BLIG that it owed as a result of the exchange of information and the confirmation of the relationship by representatives of LHR.

97. There can be no doubt that the utilization of this information in order to make a determination with respect to an "assets only" purchase that will not benefit any of the stakeholders, shareholders, creditors, aside from Stuart Livingston and James McLean, is a clear misuse of this confidential information and a breach of the fiduciary duty to continue the development with BLIG.

98. The receipt of confidential information in circumstances of confidence establishes a duty not to use that information for any purpose other than that for which it was conveyed. The evidence of Henry Wetelainen including the reference to the email authored by Andrew Malim make clear that the purpose of receiving the confidential information was:

> "We would be pleased to work with you to fund and develop your family property"[44]

Factor 3 and 4 of Royal Bank v. Soundair Corp et al.:

> **"3. It should consider the efficacy and integrity of the process by which offers are obtained."**
>
> **"4. It should consider whether the process was unfair"**

99. The process that is referenced in this element of the *Royal Bank V. Soundair Corp.* test applies not only to the conduct of the Receiver but also to the conduct of the purchaser.

100. The evidence before the Court makes very clear that the representatives of BLIG were misled by the proposed purchaser, LHR.

[44] Affidavit of Henry Wetelainen sworn December 17, 2015, para. 14

101. As well, the Receiver made a conscious and purposeful decision to not return to Court to seek an extension of the SISP. The result of this decision was that the representatives of BLIG properly determined that the process that they were involved with LHR was the only process that the Receiver was dealing with and in fact BLIG knew as a result of the commitment of LHR to work with BLIG that in fact it was a process that would culminate in the termination of the Receivership.

102. The Receiver knew from the time that it commenced negotiations with LHR that BLIG and its representatives has commenced this process with LHR, and in fact Henry Wetelainen involved the Receiver once Henry Wetelainen spoke with the Receiver about the interest of LHR. This is not a situation where LHR was attracted to the purchase as a result of the actions of the Receiver but rather as a result of the actions of the representatives of BLIG to secure additional financing to retire the debt that was owed to the Applicant company.

103. At that time as a result of the information that the Receiver had, the Receiver was aware of the nature of the relationship between BLIG and LHR.

104. Due diligence of the proposed purchaser LHR should have been completed by the Receiver. It did not take place.

105. Given the value of the asset being conservatively based at 198 million dollars as compared to the purchase price, the Receiver had an obligation to ensure that the purchaser was not violating an agreement or a fiduciary duty that the perspective purchaser had to BLIG.

106. The major creditor of BLIG in working with the Receiver and in commencing the subject Application chose to make the sale of the security subject to the approval of this Court. Clearly, the Applicant evidenced an intention on behalf of the parties to invoke the normal equitable doctrines which placed the Court in the position of looking to the interests of all persons concerned before giving its blessing to a particular transaction submitted for approval.[45]

107. In the case at bar, the Respondent is entitled to the equitable relief of the Court refusing to approve the offer of LHR in that the record before the Court evidences that the conduct of LHR has been a violation of their fiduciary duty to BLIG, its creditors, shareholders, stakeholders and the affected Aboriginal communities. through and until the secret signing of the Letter of Intent on September 30, 2015 that excluded all interest of BLIG, any other creditors and shareholders and affected Aboriginal communities.

108. The stated desire of the major creditor's representative, Stewart Livingston to accept the offer ought not to be the subject of a "rubber stamping" of the Vesting Order on behalf of the Receiver. The Receiver is well aware that the transaction proposed by LHR will see ongoing benefit accrue to Mr. Stuart Livingston. This ongoing benefit that continues post closing of the transaction is not quantified by the Receiver

109. It is respectfully submitted that the Court ought to properly review the appropriateness of providing an ongoing benefit to a major creditor that survives the closing of the transaction and that is not adequately disclosed to the Court.

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[45] *Cameron v. Bank of Nova Scotia*, 1981 CarswellNS 47 (S.C.), Book of Authorities of A. Farber & Partners Inc., Tab 4

110. The setting aside of the proposed “assets only” agreement is not a process that would:

> “literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.”[46]

111. On the contrary the setting aside of the agreement would provide guidance to Receivers with respect to good faith negotiations between parties that include the responding companies and individuals with respect to Receivership matters. BLIG purposely and knowing entered into a relationship with LHR. It may be that the Receiver was not aware of this information when they entered into the agreement; however, the Receiver has a duty to be fair and to act in good faith. The Receiver has not been provided with information that makes very clear that LHR has breached its fiduciary duty to BLIG. While the Receiver chooses to characterize this action as a “serious breach of the Order of the Court”, it is in fact clear evidence to the Receiver that LHR has breached its fiduciary duty. It is respectfully submitted that the Receiver is not entitled to ignore this very important evidence with respect to the agreement that it entered into with LHR.

112. BLIG was definitely prejudiced by the Receiver continuing negotiations with LHR after the expiry of the SISP. The Receiver had conducted an SISP which was terminated prior to any contact with LHR by the Receiver. As well, while the Receiver may not have actively misled BLIG with respect to the status of the opportunity to refinance BLIG, the

[46] *Cameron v. Bank of Nova Scotia*, 1981 CarswellNS 47 (S.C.), Book of Authorities of A. Farber & Partners Inc., Tab 4

Receiver was aware that from both the actions and documents provided by BLIG's representatives that BLIG's representatives only purpose and intention was to refinance BLIG in continuing the operation for the benefit of all creditors, shareholders, stakeholders and affected Aboriginal communities.

113. The Receiver's decision to enter into the Letter of Intent on September 30, 2015 when the Receiver knew clearly that BLIG's representatives have been working consistently with LHR, is not reasonable and sound in the existing circumstances. The Affidavit of Henry Wetelainen makes very clear that the Receiver knew that LHR was working with BLIG throughout this process.[47]

114. The process undertaken by the Receiver was not fair and not reasonable once LHR determined that it would exclude BLIG from the relationship previously established and that such exclusion would mean the termination of all creditors and shareholders rights and value in the company.

115. The issue of continued negotiations after the expiry of the deadline to submit offers is very much problematic for the Receiver. It cannot be argued that the Receiver was acting pursuant to the SISP in that the Receiver's Report candidly acknowledges that the Receiver's first contact with LHR was following the expiration of the Court ordered SISP.

116. The Receiver did not continue to negotiate with LHR following the deadline but rather participated in a negotiation with both LHR and BLIG for the purpose of refinancing the property.

[47] The Affidavit of Henry Wetelainen dated December 17, 2015

117. Quite contrary to the Receiver's suggestions that no parties were prejudiced by the Receiver continuing negotiations, the opposite is true.

118. The Receiver did not conduct the SISP in a transparent and open manner. The SISP terminated after the first extension and was not renewed by the Court. Following the expiration of the SISP, the Receiver did in fact mislead BLIG by failing to provide BLIG with note of LHR's abrupt change in focus as evidenced in the Letter of Intent signed by the Receiver and LHR on September 30, 2015 to the total exclusion of BLIG.

119. It is not correct to state that other perspective bidders for the property have had ample opportunity to submit offers or proposals in respect of this property and to suggest that this was the case with respect to BLIG. BLIG entered into a CA/NDA with LHR in March of 2015 and continued to operate under the terms and conditions of that agreement through to and including November 26, 2015.

120. The Court has determined that when deciding whether a Receiver has acted providently, the Court should examine the conduct of the Receiver in light of the information the Receiver had when it agreed to accept the offer.

121. In this case, the Receiver knew that LHR had been involved in discussions with BLIG about assisting in refinancing and funding the continued development of the Josephine Cone Mine.

122. The Receiver also knew that there was a definite change in focus as a result of the LHR indicating to the Receiver, and making it known to the Receiver that they were no longer going to include BLIG or BLIG's representatives in any manner in going forward to purchase the "assets only".

123. This is not a situation where this information has come to light after the Receiver accepted the Order. The Receiver had been working with BLIG and LHR in a manner that included the exchange of confidential information, the signing of the Confidentiality Agreement and a hosted visit to the actual property with further disclosure of confidential information to LHR during such period.

124. The Receiver cannot suggest that it is not aware of the serious change in circumstances and the actions of LHR vis a vis its agreement with BLIG.

The Entering Into the Letter of Intent of September 30, 2015 and the Asset Purchase Agreement of November 27, 2015:

125. The entering into the Letter of Intent of September 30, 2015 and the Asset Purchase Agreement of November 27, 2015 was not reasonable and sound given the circumstances that existed at the time of the signing of both documents and the position of BLIG.

Fiduciary Duty of Parties:

126. The law is very clear in Canada as a result of the decision in *Lac Minerals Ltd. v. Corona Resources Ltd.*, [1989] 2 S.C.R. 574[48], that a fiduciary duty that arises as a result of the disclosure of confidential information in a business relationship is a paramount duty that must be respected by the Court. It is respectfully submitted that a failure by the Receiver to recognize the requirement to make enquiries into the status of the relationship between LHR and BLIG is a failure of an experienced Receiver and as such impacts the integrity of the transaction. In addition, the commercial efficiency of the proposed sale is impacted given that until November 26, 2015, after many months of participating in a clear, open and obvious effort to assist in a restructuring with the assistance of LHR, BLIG was notified that the assets of BLIG were going to be sold by the Receiver subject to a Court Order and that they had exactly 13 days to:

a) Receive the information;

b) Circulate the information;

c) Analyze the information;

d) Receive advice from counsel;

e) Permit counsel to become familiar with the transaction in that counsel had not been involved because of the ongoing fiduciary relationship between the parties;

f) Complete extensive and complicated responding materials;

[48] *Lac Minerals Ltd. v. Corona Resources Ltd.*, [1989] 2 S.C.R. 574

Fiduciary Obligation:

127. The common features which provide a rough and ready guide to whether or not a fiduciary obligation should be imposed a relationship:

1. The fiduciary has scope for the exercise of some discretion or power;

2. The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiaries legal or practical interests;

3. The beneficiary is peculiarly venerable to or at the mercy of the fiduciary holding the discretion or power;

128. BLIG was entitled to expect that LHR would act in the best interests of BLIG and for the purpose of the relationship that was created between BLIG and LHR. LHR and BLIG were not arms length commercial parties. In fact, the fiduciary duty imposed upon LHR will reflect that LHR had the scope for the exercise of some discretion or power namely, doing exactly what they have done as of September 30, 2015 which is improperly exclude BLIG from the refinancing.

129. As is evidenced the fiduciary, LHR unilaterally exercised the power to exclude BLIG from any agreement with the Receiver and as such affected BLIG's legal and practical interests to such a great extent should the offer of LHR be accepted, BLIG will cease to exist and all existing shareholders will lose any value that exists in the company.

Non Disclosure Agreement – Confidentiality Agreement:

130. On March 10, 2015, Henry Wetelainen received a copy of a Confidentiality Agreement from LHR. On March 12, 2015 Saradhi Rajan, Managing Director and founder of LHR and Henry Wetelainen, President and CEO of BLIG signed the CA/NDA as between LHR and BLIG.[49]

131. The purpose of the Confidentiality Agreement is as follows:

> "**WHEREAS**
>
> The parties are together engaged in discussions regarding a management, technical advisory, and financial arrangement to be defined (the "Project") during which either party ("the Discloser") may disclose Confidential Information (as defined below) to the other party ("the Recipient"). In order to adequately protect each party's Confidential Information, the parties wish to conclude a written agreement between them setting out their obligations of confidentiality."[50]

132. Further in the Confidentiality Agreement between BLIG and LHR, Article 1 determines the definition of confidential information. It states as follows:

> "1. **Definition of Confidential Information**: For purpose of this Agreement, "Confidential Information" means any and all information, including compilations of information, , relating to the Disclosing Party or the business of the Disclosing Party, which the Disclosing Party provides to the Receiving Party. Without limiting the generality of the foregoing, the Confidential Information includes, inter alia, all trade secrets, technical information, designs, processes, systems, procedures, formulae, test data, know-how financial plans, programs, algorithms, designs, specifications, methods, biometric or ideogram developments information regarding patents, trade-marks, copyright and other intellectual property, price lists, research, data, specifications, plans, drawings (architectural, engineering or

[49] Affidavit of Henry Wetelainen dated December 17, 2015, Exhibit 9
[50] Affidavit of Henry Wetelainen dated December 17, 2015, Exhibit 9

otherwise), computer systems, software and computer code prototypes, models, documents, records, instructions, manuals, papers, other materials of any nature whatsoever, and any other compilation of information, , relating to same, as well as the existence of this Agreement and its terms and conditions. Notwithstanding the above, Confidential Information shall not include any information which:

1. At the time of disclosure, or thereafter, is generally available to and known by the public;

2. Was, is, or becomes lawfully available to the Receiving Party from a source other than the Disclosing Party without breach of obligation of confidentiality;

3. Is independently developed by the Receiving Party without reference to the Confidential Information; or

4. Is disclosed under operation of law or government regulation, provided that the Receiving Party delivers a copy of such order or action to the Disclosing Party."[51]

133. The CA/NDA that was signed between LHR and BLIG was not completed in any manner or with the co-operation, involvement or direction of the Receiver, it was signed on March 12, 2015 by representatives of LHR and BLIG.

134. At the time the CA/NDA was signed LHR was discussing with BLIG an avenue to provide financing and assistance to the company.

135. As the preamble of the CA/NDA makes clear:

> "AND WHEREAS the Parties are are (sic) together engaged in discussions regarding a management, technical advisory, and financial arrangement to be defined … "[52]

[51] Affidavit of Henry Wetelainen dated December 17, 2015, Exhibit 9
[52] Affidavit of Henry Wetelainen dated December 17, 2015, Exhibit 9

136. At all times, Henry Wetelainen relied upon the endorsed CA/NDA, as well as the draft Confidentiality Agreement that had been provided by LHR which confirmed:

> "3. except for the purpose of considering or executing a business transaction between the Disclosure and the Recipient, the Recipient will not make any use of the Confidential Information for its own use or commercial purposes or in any way to the prejudice of the Discloser or any other party on whose behalf the Confidential Information has been disclosed and the Recipient shall not directly or indirectly disclose or make available the Confidential Information to any other person for any use, except as permitted hereunder."[53]

137. I ask the Court to note that in the evaluation of the sale agreement the suggestion that the purchase price represents the best and highest offer requires that the Court review the circumstances such as the actions of LHR and the fiduciary duty and constructive trust that was formed between BLIG and LHR in March of 2015, prior to the Receiver providing any confidential information to LHR.

138. The efficacy and the integrity of the process will be assured as a result of BLIG being able to continue with the existing:

- Environmental Federal Assessment (RM to provide more information!);
- Provincial Environmental Assessment;
- Aboriginal Preferences Program;
- Royalty Agreements with Aboriginal communities;

[53] Affidavit of Henry Wetelainen dated December 17, 2015, Exhibit 4

139. It is important for the Court to carefully review the information that the Receiver was in possession of when the Receiver made the decision to accept the Offer from LHR.

140. At the time of the acceptance of the offer on November 27, 2015, the Receiver was clearly aware that LHR, and in particular Andrew Malim, had provided sufficient information to the representatives of BLIG to ensure that BLIG understood clearly that LHR was determined to work with BLIG to try to take the project forward again. As well, Andrew Malim had indicated in his email of March 11, 2015:

> ”we will discuss with you our proposed program and how we may be able to work together to complete what your family started 2 generations ago.
>
> We are all hopeful of a positive outcome for all of us.”[54]

141. Further, Andrew Malin in his email of March 10, 2015 indicated that:

> “We would be pleased to work with you to fund and develop your family property. We understand that the company is in receivership but with goodwill and understanding on all sides, we can come up with a workable solution, I am sure.
>
> We would like to review the historic data.”[55]

142. Andrew Malim reported to Henry Wetelainen:

> “ good call Henry we appreciated your open approach. We were encouraged. We look forward to working with you to try to take the project forward again. Best Andrew” [56]

[54] Affidavit of Henry Wetelainen dated December 17, 2015, para. 26
[55] Affidavit of Henry Wetelainen dated December 17, 2105, para. 14

143. As a result of the signing of the CA/NDA and the confirmation of the nature of the joint relationship between LHR and BLIG, on March 12, 2015, Dawn McKay of BLIG made available all of BLIG intellectual property by way of a Dropbox invitation. On March 14, 2015, Drew Craig, LHR's geologist and also D. Saradhi Rajan, the Managing Director and founder of LHR did in fact access all of this confidential information.[57]

144. The Receiver's counsel as well as counsel for the Applicant were entitled to file affidavits pursuant to Rule 39.01 of the *Rules of Civil Procedure*. It is respectfully submitted that an adverse interest may be drawn from the failure of both parties to provide affidavit evidence to support the information provided in the Receiver's Report.

Striking and Amending the Receiver's Report:

145. As an officer of the Court the Receiver has an obligation to put before the Court all relevant information and to provide such information in as full a form as possible. The affidavit evidence of Henry Wetelainen provides the Court with this appropriate window into the inaccuracies and failure to disclose.

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[56] Email of Andrew Malim, Director – Project Development and Finance, LHR to Henry Wetelainen, dated April 30, 2015.

[57] Affidavit of Henry Wetelainen dated December 17, 2015, para. 82 - 84

Disclosure to the Court With Respect to Legacy Hill Resources Limited and the Due Diligence Process:

146. The sale transaction that the Receiver is attempting to have finalized by way of a vesting Order is not a completed transaction. LHR has specifically confirmed and protected their rights to complete due diligence prior to December 29, 2015. It is respectfully submitted that the application for the vesting Order is premature. As well, it is respectfully submitted that the Receiver, as an officer of the Court has an obligation to provide the relevant information to the Court on the day of the hearing of the motion with respect to whether in fact the provision regarding the due diligence has been complied with or in fact whether an extension has been requested.

The Weight Given to the Receiver's Report:

147. It is respectfully submitted that pursuant to Rule 39.01 of the *Rules of Civil Procedure* that the Receiver's report is in fact not evident that is supported by affidavits. Rather it is a statement by a Receiver in a report to Court.[58]

148. The Reports of the Receiver clearly rely upon hearsay and it is respectfully submitted that the reports in nature, as set out in both the motion material and the affidavits in support of the motion material are flawed and incomplete. This proceeding by way of motion for a vesting order is governed by the *Rules of Civil Procedure* and it is not a procedure tribunal where hearsay evidence is freely admissible.[59]

[58] *Ontario Rules of Civil Procedure*, Rule 39.01
[59] The Law of Evidence in Canada, Third Edition, Sopinka, Lederman & Bryant, page 390

149. The Receiver's counsel filed the Report of the Receiver to be utilized in support of the motion for the vesting order that is before this Court. The Receiver's counsel received the initial Affidavit of Henry Wetelainen sworn December 09, 2015. The Receiver did not take any steps to provide affidavit evidence in support of the motion in response to the allegations contained in the Affidavit of Henry Wetelainen sworn December 09, 2015.

150. Upon the further service of the Affidavit of Henry Wetelainen sworn December 17, 2015, with the attached 35 exhibits, the Receiver's counsel once again did not file an affidavit either responding to the allegations as contained in the Affidavits of Henry Wetelainen or to support the supplementary Report of the Receiver filed.

151. It is appropriate that this Court review the Report of the Receiver and redact or amend the statements in the report that fail to respect the Rules of Evidence with respect to hearsay.

Self-Serving Evidence:

152. The letters of December 14, 2015 authored by legal counsel for LHR, as well as the letter of December 21, 2015 authored by counsel for the Receiver are entirely self-serving and it is respectfully submitted that this evidence should not be permitted to form part of the record with respect to the motion to be argued nor should any counsel be permitted to refer to these two letters in that there is a general exclusionary rule against the admission of self-serving evidence to support out of Court activity are entirely self-serving. The admission of these two letters will not shed any light on the material issues to be determined on the hearing of the motion.

153. It is respectfully submitted that the affidavit evidence of Henry Wetelainen sworn on December 09, 2015 and December 17, 2015 clearly indicate that the report of the Receiver has failed to provide the Court with the entire picture of what has transpired. This is evidenced particularly so when the Receiver suggests that as a result of the sale process he commenced discussion with LHR. In the exhibits filed in support of the Receiver's motion it is clearly shown that the Receiver did not successfully make contact with LHR until such time in April 2015 and certainly not until May 27, 2015, the date upon which the SISP expired.[60]

154. While the Court may place confidence in the actions taken and in the opinions formed by the Receiver, the Court is the supervising party that must be confident that the actions of the Receiver have been carried out properly.

155. The record makes clear that the Receiver worked in conjunction with BLIG and LHR at all times keeping BLIG's representatives aware of the process and the information being exchanged between all parties. This process was not respected by the Receiver beginning in September of 2015 when the Receiver without notice to BLIG began to have confidential meetings with LHR that ultimately culminated in LHR proceeding with an "assets only" purchase.

156. It is respectfully submitted that the considerations of the Court with respect to the Receiver's actions and efforts must be informed by the expectations between parties that the Receiver is responsible for or partially responsible for generating.[61]

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[60] Affidavit of Henry Wetelainen dated December 17, 2105
[61] Affidavit of Henry Wetelainen dated December 17, 2015, para. 66 - 67

157. It is submitted that the BLIG property is not a situation where the Receiver is dealing with “an unusual or difficult asset”. The Court is required to carefully scrutinize the procedure that the Receiver followed and as such, the Receiver must act “with meticulous correctness, but not to a standard of perfection”.

158. The Court has confirmed at paragraph 43 in 1117387 Ontario Inc. v. National Trust Company, 2010 ONCA 340 that:

> “A court appointed receiver has a fiduciary duty to act honestly and fairly on behalf of all who have an interest in the debtors property. The receiver, as an officer of the court, is obliged to make full and fair disclosure to the court in all of its applications: HSBC at para. 26”[62]

159. Following the granting of the Order of the Honourable Mr. Justice D.C. Shaw dated September 11, 2014, the President and the three members of the Board of Directors specifically did not put forward any proposal to the Receiver that would have diminished any of the shareholders, creditors, stakeholders and Aboriginal communities.

160. It was clearly open to Mr. Wetelainen, Ms. McKay and others involved in the management of BLIG to present an assets only purchase; however, as indicated in Mr. Wetelainen’s Affidavit, this was never a consideration. Mr. Wetelainen viewed the Receivership as a possibility and opportunity to restructure the finances of the company and moved forward for the benefit of all shareholders, creditors, stakeholders and Aboriginal communities affected by the development.

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[62] National Trust Co. v. 1117387 Ontario Inc., 2010 ONCA 340, 2010 CarswellOnt 2869, at para. 43

161. The emails of Andrew Malim contained within the Affidavit of Henry Wetelainen dated December 17, 2015 make very clear that LHR intended to utilize the benefits of working directly with BLIG and involving BLIG in the proposed program.[63]

162. Paragraph 31 of the Applicant's Factum suggests that the Debtor's Directors, Officers and Shareholders were given ample opportunity to conduct due diligence and make an offer. At all times, once the relationship was formed between LHR and BLIG, BLIG acted in good faith in continuing with discussions with LHR for restructuring and refinancing of BLIG that would protect all of the Debtor's Directors, Officers and Shareholders, all Stakeholders and creditors.

163. The Applicant suggests that paragraph 32 of their Factum that in the event that the Debtor is of the view that the property is worth more than the debt owing to its creditors it was always open to the Debtor to take appropriate steps to redeem the debt owing to the secured lenders and seek various remedies inclusive of seeking the termination of the Receivership proceedings.

164. The Receiver improperly states that BLIG has not done so. To the contrary, until November 26, 2015, the evidence clearly shows that BLIG was working very diligently and extending incredible effort in the process on a without payment basis to the individuals involved seeking to in fact do exactly what the Receiver suggests in paragraph 32 was not done.

[63] Affidavit of Henry Wetelainen dated December 17, 2015

165. Contrary to paragraph 33 in the Factum of the Applicant, the SISP expired and the continuation of discussion within interested parties did not include LHR. It included LHR as a party who was brought to the Receiver by BLIG pursuant to an agreement that BLIG reached with LHR beginning in March 2015.

166. The Factum of the Applicant dated December 04, 2015 at page 11, paragraph 39 makes the statement based upon the third report at para. 49. Paragraph 49 simply states information without any basis, information and belief or identification of source. In fact the sale agreement and the transaction are not in the best interest of the local communities including the First Nations. The possibility of a foreign controlled corporation developing the Josephine Cone Mine after having violated their fiduciary relationship that they knowingly entered into with BLIG is virtually non-existent.

167. A reopening of the process to permit the major stakeholders in BLIG to submit an offer in line with the offer improperly submitted by LHR will not jeopardize the efficiency and integrity of the sale process. Clearly, the actions of LHR were improper and the Court ought not to endorse such actions by granting the relief requested.

168. The Receiver acknowledges that Henry Wetelainen was initially kept appraised of the Receiver's discussions with LHR in their due diligence process after Henry Wetelainen involved the Receiver.

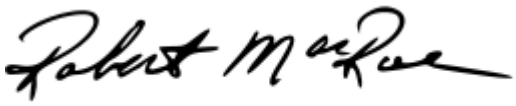
169. Purchasers are required to act in good faith when dealing with a Receiver and a company in Receivership. The evidence clearly shows that LHR and their representatives did not act in good faith but rather created a fiduciary duty between LHR and owed to BLIG and then violated the same by excluding BLIG from the refinancing at the last moment.

170. It is very clear that LHR did not act in good faith. LHR entered into a process with BLIG that resulted in the creation of a fiduciary duty that required LHR to act in good faith. The documents contained in the Affidavits of Henry Wetelainen make very clear that the perspective purchaser did not act in good faith, and accordingly a Court is entitled to interfere with the commercial Judgement of the Receiver to sell the asset to LHR.

PART II - ORDER REQUESTED

171. As set out in the Notice of Motion of the Respondent dated December 16, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of December, 2015.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Cameron v. Bank of Nova Scotia*, 1981 CarswellNS 47 (S.C.),

2. *Lac Minerals Ltd. v. Corona Resources Ltd*., [1989] 2 S.C.R. 574

3. *NationalTrust Co. v. 1117387 Ontario Inc.*, 2010 ONCA 340, 2010 CarswellOnt 2869

4. *Royal Bank v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (C.A.)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. Rule 39, *Ontario Rules of Civil Procedure*, R.R.O. 1990

EVIDENCE BY AFFIDAVIT

Generally

39.01 (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 39.01 (1).

Service and Filing

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing. R.R.O. 1990, Reg. 194, r. 39.01 (2); O. Reg. 171/98, s. 18 (1); O. Reg. 394/09, s. 17 (1).

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard at least four days before the hearing. R.R.O. 1990, Reg. 194, r. 39.01 (3); O. Reg. 171/98, s. 18 (2); O. Reg. 394/09, s. 17 (2).

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit. R.R.O. 1990, Reg. 194, r. 39.01 (4).

Contents — Applications

(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit. R.R.O. 1990, Reg. 194, r. 39.01 (5).

Full and Fair Disclosure on Motion or Application Without Notice

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application. R.R.O. 1990, Reg. 194, r. 39.01 (6).

Expert Witness Evidence

(7) Opinion evidence provided by an expert witness for the purposes of a motion or application shall include the information listed under subrule 53.03 (2.1). O. Reg. 259/14, s. 8.

2403177 ONTARIO INC.
Applicant

-and-

BENDING LAKE IRON GROUP LIMITED
Respondent

Court File No. CV-14-274

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
THUNDER BAY

RESPONDING PARTY'S FACTUM

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