

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

GOLD CANDLE LTD.

Applicant

-and-

GSR MINING CORPORATION and AJ PERRON GOLD CORP.

Respondents

**FACTUM OF THE APPLICANT
(Application Returnable May 3, 2016)**

April 26, 2016

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PART I – NATURE OF THE PROCEEDING

1. The Applicant, Gold Candle Ltd. (“**Gold Candle**”), makes application for an Order:
 - (a) appointing A. Farber & Partners Inc. as Receiver over the parcels listed at Schedule “A” to the form of Appointment Order attached as Tab 3 to the Application Record (collectively, the “**Limited Surface Rights**”);
 - (b) staying all proceedings and remedies taken or that might be taken in respect of the Limited Surface Rights or the Respondents, except as set forth in the Appointment Order or otherwise permitted by law;
 - (c) authorizing the issuance of the Writs (as hereinafter defined) *nunc pro tunc* or in the alternative, the issuance of *alias* writs referable to the Judgments;
 - (d) approving the proposed Agreement of Purchase & Sale (as hereinafter defined) in respect of the Limited Surface Rights and authorizing the Receiver to enter into and perform its obligations under same;
 - (e) granting the Receiver’s Charge (as hereinafter defined); and
 - (f) granting the proposed Approval & Vesting Order substantially in the form attached as Tab 4 to the Application Record;
2. Gold Candle brings this Application in order to acquire the Limited Surface Rights and ultimately reunite same with the Mining Rights, as further described below. In particular, Gold Candle seeks an Order appointing the Receiver over the Limited Surface Rights pursuant to section 101 *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) for the purpose

of, *inter alia*, selling the Limited Surface Rights to Gold Candle pursuant to the Agreement of Purchase and Sale and re-commencing gold mine operations, as further described below.

PART II – OVERVIEW

The Kerr-Addison Gold Mine

3. The Kerr-Addison gold mine (the “**Kerr-Addison Mine**” or the “**Mine**”) is located near Virginiatown, which sits a short distance west of the Quebec border and approximately 250 kilometres north of North Bay.

4. The Mine is in the heart of what is known as the “Golden Corridor” running from Timmins, Ontario to Val d’Or, Quebec. The area comprises a major section of the Abitibi-Greenstone Belt, considered to be likely the most prolific geological formation of its kind in the world, and to date more than 160 million ounces of gold have been extracted from it.

5. The Kerr-Addison Mine commenced operations in 1938 and ceased operation in 1996. During its 58-years of operations the Mine produced approximately 11 million ounces of gold, which was mined down to a depth of approximately 1.4 kilometers. At its peak, more than half a million ounces of gold per year were extracted from the Mine, which employed approximately 2,500 people.

Reference: Affidavit of Michael Berns, sworn April 4, 2016, Applicant's Application Record, Tab 2 (the “*Berns Affidavit*”) at paras 9-11; Exhibit “B” to *Berns Affidavit*.

The Relevant Parties

The Applicant, Gold Candle

6. Gold Candle is a corporation incorporated pursuant to the laws of the Province of Ontario.

Reference: *Berns Affidavit, supra*, at para 8; Exhibit “A” to *Berns Affidavit*.

7. As further described below, Gold Candle has acquired the Mining Rights (as hereinafter defined) in respect of the lands comprising the Kerr-Addison Mine, with a view toward re-commencing gold mining operations at the site. Gold Candle acquired a security interest over the Surface Rights (as hereinafter defined) in respect of the lands comprising the Kerr-Addison Mine, which are severed from the Mining Rights due to historical events.

Reference: *Berns Affidavit, supra*, at para 3.

The Respondent, GSR Mining Corporation

8. The Respondent, GSR Mining Corporation (“**GSR Mining**”) is a corporation existing pursuant to the laws of the Province of Ontario.

9. GSR Mining was owned by the Respondent AJ Perron Gold Corp. (“**AJ Perron**”), which is now dissolved. GSR Mining permanently ceased operations following the shutdown of the Kerr-Addison Mine in the mid-1990's.

Reference: *Berns Affidavit, supra*, at para 12-13; Exhibit “C” to *Berns Affidavit*.

10. GSR Mining is a registered 50 percent co-owner of the Surface Rights.

Reference: *Berns Affidavit, supra*, at para 4.

The Respondent, AJ Perron Gold Corp.

11. AJ Perron was a corporation existing pursuant to the laws of the Province of Ontario. AJ Perron was dissolved effective April 10, 2000.

Reference: *Berns Affidavit, supra*, at para 14; Exhibit “D” to *Berns Affidavit*.

12. Through various corporate changes, AJ Perron became the other registered 50 percent co-owner of the Surface Rights, along with the Respondent, GSR Mining.

13. It appears as though at the time of its dissolution, AJ Perron was the parent company of the Respondent, GSR Mining.

Reference: *Berns Affidavit, supra*, at para 4 and 15.

Kerr Jex Corporation

14. It appears that AJ Perron owned a 99 percent interest in Kerr Jex Corporation (“**Kerr Jex**”), which is a corporation existing pursuant to the laws of the Province of Ontario.

Reference: *Berns Affidavit, supra*, at para 16 and 19; Exhibit “F” to the *Berns Affidavit*.

United Steel Workers of America, Local 9283

15. The Mine’s employees were represented by the United Steel Workers of America, Local 9283 (the “**Union**”). Gold Candle has agreed to recognize the Union for the purpose of operating the Mine.

Reference: *Berns Affidavit, supra*, at para 20.

The Assignment Agreement

16. Pursuant to an Assignment Agreement dated January 29, 2015 (the “**Assignment Agreement**”), the Union assigned to Gold Candle all of its rights, title and interest in and to the Secured Debentures and the Judgments (as such terms are defined below). The assignment was given in consideration of, among other things, Gold Candle's agreement that it would recognize the Union for the purpose of operating the Mine.

Reference: *Berns Affidavit, supra*, at para 23; Exhibit “G” to *Berns Affidavit*.

The Judgments

17. GSR Mining and AJ Perron failed to satisfy their obligations under the collective agreement with the Union, which subsequently commenced proceedings against them pursuant to Section 48(19) of the Ontario *Labour Relations Act, 1995* and obtained a number of rulings against them.

18. As a result of the Assignment Agreement, Gold Candle is a judgment creditor of the Respondents GSR Mining and AJ Perron pursuant to the following (together, the “**Judgments**”):

- (a) Order of the Ontario Court (General Division) filed April 4, 1997 as Court File No. 97-MU-16878, incorporating the Order of the Arbitrator, J.W. Samuels, dated November 9, 1995. The balance outstanding is approximately \$135,312.86 including accrued interest through April 1, 2016. The Judgment arose from a failure by GSR Mining and AJ Perron to pay certain amounts to the Union during the period between December 1994 and September 1995; and

- (b) Order of the Ontario Court (General Division) filed April 4, 1997 as Court File No. 97-MU-16879, incorporating the Order of the Arbitrator, J.W. Samuels, dated February 21, 1997. The balance outstanding under this Judgment is approximately \$52,919.99 including accrued interest through April 1, 2016. The Judgment arose from a failure by GSR Mining and AJ Perron to pay certain amounts to the Union during the period ended January 1996.

19. The Union has no records indicating that any payments have been made in respect of the Judgments.

Reference: *Berns Affidavit, supra*, at para 40-41; Exhibits “T” and “U” to *Berns Affidavit*.

20. On March 17, 2016, Gold Candle issued writs of seizure and sale (the “**Writs**”) in respect of the Judgments.

Reference: *Berns Affidavit, supra*, at para 42; Exhibits “W” to *Berns Affidavit*.

The Secured Debentures

21. As a result of the Assignment Agreement, Gold Candle holds a Debenture and General Security Agreement from GSR Mining, as debtor, in the maximum amount of Three Million Dollars (\$3,000,000) dated November 29, 1989 (the “**GSR Debenture**”) and registered on April 6, 1994. The GSR Debenture grants a security interest over the collateral described therein, including the surface rights (which include the Limited Surface Rights) described at Schedule “A” to the Document General to which it was appended for registration (collectively, the “**Surface Rights**”).

Reference: *Berns Affidavit, supra*, at para 24(a); Exhibits “H” and “I” to *Berns Affidavit*.

22. The GSR Debenture also secures an indebtedness by GSR Mining to the Union for past severance pay in the amount of \$1.222 million (the “**GSR Indebtedness**”). The Union has no records indicating that any payments have been made in respect of the GSR Indebtedness.

Reference: *Berns Affidavit, supra*, at para 37-39.

23. As a result of the Assignment Agreement, Gold Candle also holds a Debenture and General Security Agreement between Kerr Jex, as debtor, and the Union, as creditor, in the maximum amount of Three Million Dollars (\$3,000,000) dated November 29, 1989 (the “**KJ Debenture**”) and registered on April 6, 1994. The KJ Debenture grants a security interest over the collateral described therein, including the mining rights described at Schedule “A” to the Document General to which it was appended for registration (collectively, the “**Mining Rights**”). The GSR Debenture and the KJ Debenture are collectively referred to as the “**Secured Debentures**”.

Reference: *Berns Affidavit, supra*, at para 24 (b); Exhibits “J” and “K” to *Berns Affidavit*.

24. The Secured Debentures reflect a historical separation of the Mining Rights from the Surface Rights in respect of the subject matter lands. The Mining Rights were purchased by Kerr Jex while GSR Mining retained the related Surface Rights.

Reference: *Berns Affidavit, supra*, at para 25; Exhibits “J” and “K” to *Berns Affidavit*.

The Municipal Tax Debt

25. GSR Mining currently owes an amount of approximately \$124,301.73 (the “**Municipal Tax Debt**”) to the Township of McGarry in respect of municipal taxes. The Municipal Tax Debt remains outstanding.

Reference: *Berns Affidavit, supra*, at para 43.

The Appointment of a Receiver

26. Gold Candle proposes that A. Farber & Partners Inc. (“**Farber**”) be appointed Receiver in this proceeding. Farber has consented to Act as Receiver.

Reference: *Berns Affidavit, supra*, at para 45.

The Proposed Sale

27. The Applicant seeks an Order authorizing the proposed Receiver to enter into an Agreement of Purchase & Sale (the “**Agreement of Purchase & Sale**”), pursuant to which the Applicant will acquire the Limited Surface Rights from the proposed Receiver for the total purchase price of \$422,534.58 (the “**Purchase Price**”).

28. The Purchase Price is comprised of a combination of cash in the amount of \$100,000.00 payable on closing, an assumption of liability for the Municipal Tax Debt, and the balance in the form of a “credit bid” compromised of an amount of \$188,232.85 owing to Gold Candle in respect of the Judgments.

29. In preparing its Pre-Filing Report, the proposed Receiver obtained two independent written valuations of the fair market value of the Surface Rights, which are further described below.

Reference: *Berns Affidavit, supra*, at para 48-49 and 54.

PART III – ISSUES

30. The within Application raises the following issues:

- (a) Whether Farber should be appointed as Receiver in the circumstances;
- (b) Whether a stay of proceedings in respect of the Limited Surface Rights or the Respondents, except as set forth in the Appointment Order or otherwise permitted by law, should be granted;
- (c) Whether the Court should authorize the issue of the Writs *nunc pro tunc*, or in the alternative, authorize the issuance of *alias* writs referable to the Judgments; and
- (d) Whether the Court should approve the proposed Agreement of Purchase and Sale in respect of the Limited Surface Rights and authorizing the Receiver to enter into and perform its obligations under same.

PART IV – LAW & LEGAL AUTHORITIES

(A) Whether Farber should be appointed as Receiver in the circumstances

31. It is respectfully submitted the circumstances are such that a receiver should be appointed. Section 101(1) of the CJA provides that a receiver may be appointed “...where it appears to a judge of the court to be just or convenient to do so.”

Reference: R.S.O. 1990, c. C.43, s.101(1).

32. In determining whether it is “just or convenient” to appoint a receiver, the Court must have regard to all of the circumstances, particularly the nature of the property and the rights and interests of all parties in relation thereto.

Reference: *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), 40 CBR (3d) 274 (Ont Gen Div) at para 10 [“**Freure Village**”].

Book of Authorities of the Applicant, Tab 1.

33. As stated by Justice Newbould in *Degroote v. DC Entertainment Corp et al.*, “There are no pre-conditions for the exercise of a court’s discretion to appoint a receiver. Each case depends on its own facts.”

Reference: 2013 ONSC 7101, at paras 52-53 [*“Degroote”*].

Book of Authorities of the Applicant, Tab 2.

34. The Ontario Superior Court of Justice, Commercial List has accepted that where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver upon default, this has the effect of relaxing the burden on the applicant seeking to have the receiver appointed. Further, while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

Reference: *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27 [*“Cruise Professionals”*]; *RMB Australia Holdings Limited v Seafield Resources Ltd.* 2014 ONSC 5205 at para 29 [*“RMB”*]; *Bank of Montreal v Sherco Properties Inc.* , 2013 ONSC 7023 at para 42 [*“Sherco”*].

Book of Authorities of the Applicant, Tabs 3, 4 & 5, respectively.

35. The “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court. The court should consider the following factors, among others, in making such a determination:

- (a) the potential costs of the receiver;

- (b) the relationship between the debtor and the creditors;
- (c) the likelihood of preserving and maximizing the return on the subject property;
and
- (d) the best way of facilitating the work and duties of the receiver.

Reference: *Cruise Professionals*, *supra*, at para 28.

Book of Authorities of the Applicant, Tab 3.

36. The courts have also recognized that when the debtor is no longer operating or active, the impact of the receivership will be a less drastic remedy and would not be the same as it would be if the debtor was engaged in active business.

Reference: *GE Real Estate v Liberty Assisted Living*, 2011 ONSC 4136 at paras 88(d), 90, 91; upheld by Divisional Court, *General Electric Real Estate v Liberty Assisted Living Inc.*, 2011 ONSC 4704 [“*GE Real Estate*”].

Book of Authorities of the Applicant, Tab 6.

37. Having regard to the nature of the property and the rights and interests of the stakeholders, it is both just and convenient to appoint a receiver over the Limited Surface Rights.

38. Given the passage of time and complicated history of interrelated companies, co-ownership and dissolution, as well as the severe shortage of available business records, the circumstances are such that the Limited Surface Rights cannot effectively be dealt with in the absence of judicial assistance and direction.

39. With the appropriate authority and direction of the court, Farber, as Receiver, will be in a position to effectively investigate the assets and affairs of the Respondents and their affiliates, and report its findings and recommendations to the Court and its stakeholders.

Reference: *Berns Affidavit, supra*, at para 46-47.

40. It is submitted that it is both just and convenient, and in the interests of all concerned, for the Court to appoint Farber as Receiver for the following main reasons:

- (a) the potential costs of the receivership will be borne by the granting of a charge against the Limited Surface Rights in the amount of \$100,000.00 in favour of Farber and its counsel to secure the payment of fees and expenses incurred in connection with this proceeding (the “**Receiver's Charge**”);

Reference: *Berns Affidavit, supra*, at para 61.

- (b) the complicated protracted history of interrelated companies, ownership over the Surface Rights, lack of available business information, along with the historical separation of the Mining Rights from the Surface Rights, militate in favour of appointing Farber as Receiver;
- (c) there is presently no relationship between the debtor and creditors or likelihood of repayment, as GSR Mining permanently ceased operations following the shutdown of the Kerr-Addison Mine and AJ Perron has been dissolved for approximately 16 years. The former and current creditors of GSR Mining and AJ Perron, being the Union, the Township of McGarry, and now Gold Candle (pursuant to the Assignment Agreement) remain unpaid;
- (d) The Kerr-Addison Mine has been inoperative since 1996. At its peak, more than half a million ounces of gold per year were extracted from the Mine, which employed approximately 2,500 people. The Application for appointment of

Farber as Receiver is made with the view to re-opening the Mine. Said re-opening will be of significant benefit to the region of northern Ontario, which has been economically depressed since the Mine ceased operations in the mid-1990's, and will include maximizing job opportunities and the economic return of the Limited Surface Rights, which are currently nil; and

Reference: *Berns Affidavit, supra*, at para 3.

- (e) Appointing Farber as Receiver over the Limited Surface Rights is the best way of facilitating the work and duties of the Receiver, namely, to properly conduct an investigation into the assets and affairs of the Respondents and their affiliates and ultimately report on their viability, if any at all.

41. The Secured Debentures each provide for the appointment of a receiver as a remedy upon default of payment under same.

Reference: Exhibit “H” and “J” to the *Berns Affidavit, supra*.

42. While this remedy was never exercised by the Union, as former secured creditor, GSR Mining, and Kerr Jex (which the now dissolved Respondent, AJ Perron, owned a 99% interest in) both were alive to the possibility that a receiver could be appointed upon default of its respective agreements. This has the effect of relaxing the burden on Gold Candle which is seeking to have the receiver appointed, as a receivership was a remedy contemplated by the parties at the time of entering into the Secured Debentures.

43. Lastly, both the subject property and each of the Respondents are no longer operating or active: the Mine has ceased operations for approximately 20 years and there has been no activity

on the site since the mid-1990's; the Respondent GSR Mining has ceased carrying on business since the closure of the Mine approximately 20 years ago; and, the Respondent AJ Perron has been dissolved for approximately 16 years.

44. In light of the foregoing, the impact of the receivership will be a less drastic remedy and simply put, would not be the same as it would be if the Mine was operating and if both AJ Perron and GRS Mining were engaged in active business operations in relation to the Mine, or at all.

(B) Whether a stay of proceedings in respect of the Limited Surface Rights or the Respondents, except as set forth in the Appointment Order or otherwise permitted by law, should be granted?

45. It is respectfully submitted that a stay of proceedings should be granted in the circumstances. Section 106 of the CJA provides that a Court may stay any proceeding "...on such terms as are considered just."

Reference: R.S.O. 1990, c. C.43, s.106.

46. The statutory stay of proceedings permits the orderly and efficient realization of the debtor's assets, the judicial determination of creditor claims and priorities and the fair distribution of proceeds to creditors by reference to their legal rights.

Reference: *Canada (Attorney General) v Reliance Insurance Co.*, 2007 CanLII 41899 at para 26 [***Reliance Insurance***].

Book of Authorities of the Applicant, Tab 7.

47. The Appointment Order contemplates a stay of all proceedings in respect of GSR Mining, AJ Perron and the Limited Surface Rights pending completion of the transaction contemplated in the Agreement of Purchase and Sale (as hereinafter defined) and the Receiver's investigation of the assets, affairs and administration of any remaining property.

Reference: *Berns Affidavit, supra*, at para 60.

48. It is respectfully submitted that the stay of proceedings in this Application will permit the orderly and efficient investigation by the Receiver into the complicated history of interrelated companies and historical events, as well as the assets and affairs of the Respondents (and their affiliates) and the Limited Surface Rights. A stay of proceedings in this case would ensure that such investigation and the purchase of the Limited Surface Rights by Gold Candle, if approved by this Honourable Court, is dealt with in an orderly, fair and equitable manner.

(C) Whether the Court should authorize the issue of the Writs *nunc pro tunc*, or in the alternative, authorize the issuance of alias writs referable to the Judgments?

49. Rule 60.07(2) of the *Rules of Civil Procedure* provides that leave of the court must be obtained if a writ is sought more than six years after judgment. Rule 60.07(2) provides:

If six years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a writ of seizure and sale shall not be issued unless leave of the court is first obtained.

Reference: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, Rule 60.07(2).

50. It is respectfully submitted that this Honourable Court should grant leave to the Applicant to issue the Writs *nunc pro tunc*. The test for whether leave should be granted to issue a writ after expiry of the six year period was articulated in a pair of decisions by Master Dash, in *Adelaide Capital Corporation v. 412259 Ontario Limited et al.* and *Royal Bank of Canada v. Correia*. Master Dash stated that there is a "...very low evidentiary threshold for a judgment creditor to obtain leave."

51. Leave should be granted where the court may conclude that: (i) the plaintiff has not waived its rights under the judgment or otherwise acquiesced in non-payment of the judgment,

and (ii) the judgment debtor has not relied to its detriment or changed its financial position in reliance on reasonably perceived acquiescence resulting from the delay.

Reference: *Royal Bank of Canada v Correia*, [2006] OJ No 3206 at para 5 & 6 ["*Correia*"]; *Adelaide Capital Corp. v 412259 Ontario Ltd. et al*, [2006] OJ No 4175 at para 10 – 13 ["*Adelaide*"].

Book of Authorities of the Applicant, Tabs 8 & 9, respectively.

52. There is no evidence that the Union or the Applicant (as the Union's assignee) waived any rights under the Judgments or otherwise acquiesced in non-payment of same. Rather, any delay in enforcing such rights appears to have been the result of the Mine's shutdown prior to the issuance of the Judgments. Similarly, there is no evidence that either of the Respondents relied to their detriment or changed their financial position in reliance on any reasonably perceived acquiescence to non-payment.

53. The Judgments were issued on April 4, 1997, and as such are subject to the former *Limitations Act*, R.S.O. 1990, c. L.15, which provided a limitation period of twenty years for actions on a judgment. As such, the Judgments remain enforceable.

(D) Whether the Court should approve the proposed Agreement of Purchase and Sale in respect of the Limited Surface Rights and authorize the Receiver to enter into and perform its obligations under same?

The Test for Approval of a Sale by Receiver

54. The Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp.* set out factors to be considered by the Court in connection with an application by a court-appointed receiver to sell property:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

Reference: 1991 CanLII 2727 at para 16 [*“Soundair”*].

Book of Authorities of the Applicant, Tab 10.

55. In approving a receiver's sale of property, the courts have taken into consideration the type of property that is the subject of the sale, namely, whether there is an unusual nature to the asset being sold.

Reference: *Soundair, supra*, at para 15; *British Columbia v A & A Estates Ltd.* [1999] BCJ No 2923 at para 68 [*“A.A. Estates”*].

Book of Authorities of the Applicant, Tab 10 & 11, respectively.

56. In *A.A. Estates*, the Court dealt with an appeal from a Master's decision to convert an application for a court-approved sale of property to a sealed bid process. Although this case involved the Province of British Columbia as applicant for a court-approved sale in a foreclosure proceeding, the Court applied the above-noted *Soundair* principles.

57. As part of the improvident action analysis, the Court considered the unique features of the subject property and specifically, its lack of marketability. In that case, the property was not an easy one to sell given the significant environmental remediation issues any purchaser of the property faced. At the time the initial offer was made, there was no market for the property. In light of these circumstances, the Court did not consider the Province's agreement with the appellant purchaser to be improvident.

Reference: *A.A. Estates, supra*, at paras 69-71.

Book of Authorities of the Applicant, Tab 11.

The Legal Test for Sale Approval in a “Quick-Flip” Scenario

58. According to Justice Morawetz in *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, where court approval is being sought for a so-called “quick flip” or immediate sale (which involves an already negotiated purchase agreement sought to be approved upon or immediately after the appointment of a receiver without any further marketing process), the court is still to consider the *Soundair* Principles but with specific consideration to the economic realities of the business and the specific transactions in question. In particular, courts have approved immediate sales where:

- (a) an immediate sale is the only realistic way to provide maximum recovery for a creditor who stands in a clear priority of economic interest to all others; and
- (b) delay of the transaction will erode the realization of the security of the creditor in sole economic interest.

Reference: 2013 ONSC 7009 at para 33 [*“Elleway Acquisitions”*].

Book of Authorities of the Applicant, Tab 12.

59. In granting approval of a “pre-pack” credit bid sale in a proposed receivership, Justice Brown in *Montrose Mortgage Corporation Ltd. v. Kingsway Arms Ottawa Inc.* held:

“Quick flip” or “pre-pack” transactions are becoming more common in the Ontario distress marketplace. In certain circumstances, a “quick flip” involving the appointment of a receiver and then immediately seeking court approval of a “pre-packaged” sale transaction may well represent the best, or only, commercial alternative to a liquidation...

Reference: 2013 ONSC 6905, at para 10 [*“Montrose Mortgage”*].

Book of Authorities of the Applicant, Tab 13.

60. Justice Brown further held that courts will scrutinize with especial care the adequacy and the fairness of the sales and marketing process in “quick flip” transactions. Part of the duty of a receiver is to place before the court sufficient evidence to enable the court to understand the implications for all parties of any proposed sale and, in the case of a sale to a related party, the overall fairness of the proposed related-party transaction.

Reference: *Montrose Mortgage, supra*, at para 10.

Book of Authorities of the Applicant, Tab 13.

61. In concluding that it was just and convenient to appoint a receiver and approve an immediate sale, Justice Brown considered, *inter alia*, the following: (a) the appointment of the receiver was necessary to continue to operate the subject property and maintain current levels of employment; (b) despite a prolonged effort to elicit interest in the properties from third-party purchasers, the market conditions were such that interests would not cover the secured indebtedness; (c) the appraisals provided necessary evidence to conclude the proposed purchase price was reasonable in the circumstances; and (d) the proposed sale agreement gave proper treatment to claims in priority to that enjoyed by the applicant.

Reference: *Montrose Mortgage, supra*, at para 11.

62. The Ontario Superior Court of Justice (Commercial List) has accepted that while a “quick flip” transaction is not the usual transaction, in certain circumstances it may be the best, or the only, alternative. In considering whether to approve a “quick flip” transaction, the Court should consider the impact on various parties and assess whether their respective positions and the

proposed treatment that they will receive in the “quick flip” transaction would realistically be any different if an extended sales process were followed.

Reference: *Tool-Plas Systems Inc. Re* (2008) 48 CBR (5th) 91 at para 15 [“*Tool-Plas*”]; *Montrose Mortgage, supra*, at para 10; and *Elleway Acquisitions, supra*, at para 34.

Book of Authorities of the Applicant, Tab 14, 13 & 12, respectively.

63. Gold Candle respectfully submits that the following factors militate in favour of the appointment of the Receiver and the approval of the Agreement of Purchase and Sale, or in other words, an approval of a “quick flip” transaction:

- (a) The Appointment of the Receiver is necessary to re-open the Kerr-Addison Mine and commence mining opportunities, thereby benefitting the surrounding regions which have been economically depressed since the Mine's closure in the mid-1990's. Such re-commencement of the Mine which will maximize opportunities and the economic return of the Limited Surface Rights, which are currently nil;
- (b) The Ker-Addison Mine and the Limited Surfaces encompass unusual and unique features: (i) the Mine enjoys unique geographical and historical characteristics; (ii) historical events have resulted in a separation of the Surface Rights and Mining Rights on the Mine; (iii) there is complicated protracted history of interrelated companies, co-ownership and dissolution related to the Mine; and (iv) since the Mine ceased operations in the mid-1990's, the site has remained entirely unused and dormant;
- (c) It is highly improbable that any party other than Gold Candle would have any interest in acquiring the surface rights, as Gold Candle already owns the Mining

Rights and does not require the Limited Surface Rights to conduct gold mining operations on the subject land;

Reference: *Berns Affidavit, supra*, at para 53.

- (d) In light of subparagraphs (b) and (c) above, the proposed Receiver was not acting improvidently when entering into the Agreement of Purchase and Sale. The proposed Receiver did not conduct a public sales process as there is simply no market for the Limited Surface Rights. The nature of the property, and the Limited Surface Rights in particular, would make it difficult, if not nearly impossible, to sell the Limited Surface Rights on the open market;
- (e) The proposed Receiver has made commercially reasonable efforts to secure the highest Purchase Price. As mentioned above, while the proposed Receiver has not canvassed the market in the traditional manner (*i.e.*, by conducting a public sales process), in preparing its Pre-Filing Report (the “**Pre-Filing Report**”) the proposed Receiver obtained two independent written valuations of the fair market value of the Limited Surface Rights (together, the “**Appraisals**”):
 - (i) Property Appraisal Report prepared by Victor Palangio Real Estate Ltd. dated March 14, 2016 (the “**Palangio Report**”). The Palangio Report includes an appraised value of \$412,150 for the Limited Surface Rights as at March 2, 2016; and
 - (ii) Written Appraisal from Northern Pride Real Estate Ltd., a real estate brokerage in Englehart, Ontario, dated February 20, 2016 (the “**Northern**

Pride Report”). The Northern Pride Report values the Limited Surface Rights at between the estimated amounts of \$109,607.84 and \$256,943.84;

- (f) The Purchase Price is reasonable in the circumstances. The aggregate value of the various components of the Purchase Price payable under the Agreement of Purchase and Sale significantly exceeds the above-noted appraised values;

Reference: *Berns Affidavit, supra*, at para 54-55.

- (g) The interests of all parties have been properly considered:
 - (i) With respect to the debtor Respondents, AJ Perron has been dissolved for approximately 16 years and GSR Mining has ceased any active business operations since the closure of the Mine. There is no indication that AJ Perron (which owned a 99% interest in Kerr-Jex, being the debtor under the KJ Debenture) will revive or that GSR Mining will re-commence operations so as to meet their outstanding debt obligations pursuant to the Secured Debentures and the Judgments, which remain unpaid;
 - (ii) With respect to the Township of McGarry, the Agreement of Purchase and Sale provides proper treatment. In particular, the Agreement of Purchase and Sale will allow for the otherwise uncollectable Municipal Tax Debt to be satisfied in full. Operations of the Mine will also add to the municipal tax base on a go-forward basis and will jump-start proposed mining activities, leading to job creation and increased economic opportunities for local residents; and

Reference: *Berns Affidavit, supra*, at para 49(b) and 56.

- (iii) With respect to the Applicant Gold Candle, as secured creditor pursuant to the Assignment Agreement, the appointment of the Receiver and Approval of the Agreement of Purchase and Sale will promote the consolidation and “clean up” of title to the lands, which would simplify and facilitate investment, exploration, development and re-operation at the Mine by Gold Candle;

Reference: *Berns Affidavit, supra*, at para 56.

- (h) The efficacy or integrity of the process which led to the Agreement of Purchase and Sale would not benefit from any sort of typical public sale or auction in this process. In particular, it is unlikely that any further efforts by the Receiver to market the Limited Surface Rights would yield a purchase price in excess of that contained in the Agreement of Purchase and Sale;

Reference: *Berns Affidavit, supra*, at paras 52 and 58.

- (i) Given the current economic realities of the Mine and the Respondents, an immediate sale is the only realistic way to provide maximum recovery to the creditors. The proposed treatment the interested parties would receive in a “quick flip” transaction would not realistically be any different than if an extended sale process was followed. While delay in the approval of the sale transaction would not erode the realization of security in this case, an extended sale process would lead to significant additional expense without the reasonable possibility of any

other offers, let alone one competitive with the proposed Agreement of Purchase & Sale, given that there are few, if any, other qualified purchasers; and

Reference: *Berns Affidavit, supra*, at para 58.

- (j) There has been no unfairness in the sale process. The Mine has laid dormant for nearly 20 years.

Reference: *Berns Affidavit, supra*, at para 59.

64. Based on the foregoing, it is respectfully submitted that this Honourable Court ought to approve the Applicant's Application for Appointment of the Proposed Receiver over the Limited Surface Rights, and the immediate approval of the Agreement of Purchase and Sale in respect of same.

Service on Creditors

65. Pursuant to Section 242(3) of the Ontario *Business Corporations Act* (the “*OBCA*”):

“A person who commences an action, suit or other proceeding against a corporation after its dissolution, shall serve the writ or other document by which the action, suit or other proceeding was commenced, on the Public Guardian and Trustee in accordance with the rules that apply generally to service on a party to an action, suit or other proceeding.”

Reference: R.S.O. 1990, c. B.16, s. 242(3).

66. Notice of this proceeding has been provided to known creditors as well as a wide range of other stakeholders and potentially affected parties including the Respondents and their respective officers and directors, the Public Guardian and Trustee (in accordance with the *OBCA*, as AJ Perron is dissolved), the Ontario Ministry of Northern Development and Mines, the Township of McGarry, the Union and other known creditors.

Reference: *Berns Affidavit, supra*, at para 57.

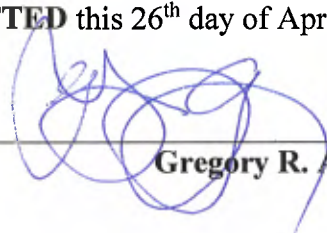
PART V – ORDER REQUESTED

67. The Applicant respectfully requests that this Honourable Court grant the following relief:

- (a) appointing A. Farber & Partners Inc. as Receiver over the Limited Surface Rights;
- (b) staying all proceedings and remedies taken or that might be taken in respect of the Limited Surface Rights or the Respondents, except as set forth in the Appointment Order or otherwise permitted by law;
- (c) authorizing the issuance of the Writs *nunc pro tunc* or in the alternative, the issuance of *alias* writs referable to the Judgments;
- (d) approving the proposed Agreement of Purchase & Sale in respect of the Limited Surface Rights and authorizing the Receiver to enter into and perform its obligations under same;
- (e) granting the Receiver's Charge;
- (f) granting the proposed Approval & Vesting Order;
- (g) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (i) the costs of this proceeding, plus all applicable taxes; and

(j) Such further and other Relief as to this Honourable Court may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of April, 2016



Gregory R. Azeff

**SCHEDULE A
LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), 40 CBR (3d) 274 (Ont Gen Div)
2. *Degroote v. DC Entertainment Corp et al.* 2013 ONSC 7101 (Ont. S.C.J. [Commercial List])
3. *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 (Ont. S.C.J.[Commercial List])
4. *RMB Australia Holdings Limited v Seafield Resources Ltd.*, 2014 ONSC 5205 (Ont. S.C.J. [Commercial List])
5. *Bank of Montreal v Sherco Properties Inc.* , 2013 ONSC 7023 (Ont. S.C.J. [Commercial List])
6. *GE Real Estate v Liberty Assisted Living*, 2011 ONSC 4136 (Ont. S.C.J. [Commercial List])
7. *General Electric Real Estate v Liberty Assisted Living Inc.*, 2011 ONSC 4704 (Ont. S.C.J. [Div. Ct])
8. *Canada (Attorney General) v Reliance Insurance Co.*, 2007 CarswellOnt 6391 (Ont. S.C.J.)
9. *Royal Bank of Canada v Correia*, [2006] OJ No 3206 (Ont. S.C.J.)
10. *Adelaide Capital Corp. v 412259 Ontario Ltd. et al*, [2006] OJ No 4175 (Ont. S.C.J.)
11. *Royal Bank of Canada v Soundair Corp.* 1991 CanLII 2727 (Ont. CA)
12. *British Columbia v A & A Estates Ltd.* [1999] BCJ No 2923
13. *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.* 2013 ONSC 7009 (Ont. S.C.J. [Commercial List])
14. *Montrose Mortgage Corporation Ltd. v. Kingsway Arms Ottawa Inc.* 2013 ONSC 6905 (Ont. S.C.J. [Commercial List])
15. *Tool-Plas Systems Inc., Re*, (2008) 2008 CarswellOnt 6258 (Ont. S.C.J. [Commercial List])

SCHEDULE B RELEVANT PROVISIONS AND STATUTES

1. *Courts of Justice Act*, R.S.O. 1990, c. C.43

Section 101(1)

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Section 106

Stay of proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O. 1990, c. C.43, s. 106.

2. **Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended**

Rule 60.07

Writ of Seizure and Sale

Where Available Without Leave

60.07 (1) Where an order may be enforced by a writ of seizure and sale, the creditor is entitled to the issue of one or more writs of seizure and sale (Form 60A), on filing with the registrar where the proceeding was commenced a requisition setting out,

- (a) the date and amount of any payment received since the order was made; and
- (b) the amount owing and the rate of postjudgment interest,

together with a copy of the order as entered and any other evidence necessary to establish the amount awarded and the creditor's entitlement. R.R.O. 1990, Reg. 194, r. 60.07 (1); O. Reg. 396/91, s. 12.

Electronic Issue of Writ

(1.1) Subject to subrule 4.05 (4.1.1), the creditor may file the requisition referred to in subrule (1) electronically, in which case,

(a) neither a copy of the order as entered nor any other evidence is required to be filed with the requisition; and

(b) the writ or writs of seizure and sale shall be issued electronically. O. Reg. 43/14, s. 14 (1).

(1.2) If a Minister or body is entitled under an Act of Canada or Ontario to file a document in the Superior Court of Justice and have it entered and enforced as if it were an order of the court, the document may be enforced by one or more writs of seizure and sale without being filed with the court, by the electronic filing with the registrar of a requisition containing the information set out in clauses (1) (a) and (b). O. Reg. 43/14, s. 14 (1).

(1.3) On the filing of a requisition under subrule (1.2),

(a) the document is deemed to have been entered as an order of the Superior Court of Justice; and

(b) the writ or writs of seizure and sale shall be issued electronically. O. Reg. 43/14, s. 14 (1).

(1.4) Revoked: O. Reg. 43/14, s. 14 (1).

Where Leave is Required

(2) If six years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a writ of seizure and sale shall not be issued unless leave of the court is first obtained. O. Reg. 770/92, s. 14.

(3) An order granting leave to issue a writ of seizure and sale ceases to have effect if the writ is not issued within one year after the date of the order granting leave, but the court may grant leave again on a subsequent motion. O. Reg. 770/92, s. 14.

Order for Payment into Court

(4) Where an order is for the payment of money into court, the writ of seizure and sale shall contain a notice that all money realized by the sheriff under the writ is to be paid into court. R.R.O. 1990, Reg. 194, r. 60.07 (4).

Order for Payment at Future Time

(5) Where an order is for payment at or after a specified future time, the writ of seizure and sale shall not be issued until after the expiration of that time. R.R.O. 1990, Reg. 194, r. 60.07 (5).

Filing of Writ with Sheriff

(5.1) A writ of seizure and sale may be filed with a sheriff. O. Reg. 43/14, s. 14 (2).

(5.2) Subject to subrule 4.05 (4.1.1), a writ of seizure and sale may be filed electronically, but a writ that is issued electronically shall be filed electronically. O. Reg. 43/14, s. 14 (2).

Error in Writ Issued Electronically

(5.3) A creditor who discovers that a writ of seizure and sale that was issued electronically and filed with a sheriff contains an error may, no later than two business days after filing, correct the error by using the software that was used for the issuance of the writ. O. Reg. 43/14, s. 14 (2).

Duration and Renewal

(6) A writ of seizure and sale remains in force for six years from the date of its issue and for a further six years from each renewal. R.R.O. 1990, Reg. 194, r. 60.07 (6).

(7) Revoked: O. Reg. 452/98, s. 5 (2).

(8) A writ of seizure and sale that is filed with a sheriff may be renewed before its expiration by filing a request to renew (Form 60E) with the sheriff, who shall record the date of renewal. O. Reg. 452/98, s. 5 (3).

(8.1) Subject to subrule 4.05 (4.1.1), a request to renew may be filed electronically. O. Reg. 43/14, s. 14 (3).

(9) A writ of seizure and sale that is not filed with a sheriff may be renewed before its expiration by filing with the registrar who issued it a requisition to renew the writ, and the registrar shall renew the writ and record the date of renewal. O. Reg. 452/98, s. 5 (3).

Change or Variation of Debtor's Name

(10) Where a debtor named in a writ of seizure and sale,

(a) changes his, her or its name after the writ is issued;

(b) uses an alias; or

(c) uses a variation of spelling of the name,

the creditor may on motion made without notice seek a change or variation to the writ. R.R.O. 1990, Reg. 194, r. 60.07 (10).

(11) On a motion referred to in subrule (10), the court may order the sheriff to,

(a) amend the writ by adding the words “now or also known as”, followed by the new name of the debtor, the alias or the spelling variation;

(b) amend the index of writs to show the new name, the alias or the spelling variation; and

(c) if a copy of the writ was sent to the land registrar for filing under the Land Titles Act, send a copy of the amended writ to the land registrar. R.R.O. 1990, Reg. 194, r. 60.07 (11).

(11.1) If the court makes an order under subrule (11), the creditor may, subject to subrule 4.05 (4.1.1), file the amendments to the writ with the sheriff electronically. O. Reg. 43/14, s. 14 (4).

Writ to Bear Creditor's Address

(12) Every writ of seizure and sale shall bear the name and address of the creditor and the creditor's lawyer, if any. R.R.O. 1990, Reg. 194, r. 60.07 (12); O. Reg. 575/07, s. 1.

Change of Address

(12.1) If the address of the creditor or the creditor's lawyer changes after the writ is issued and has been filed with the sheriff, the creditor shall file with the sheriff a requisition containing the new address and a request to change the address for the writ. O. Reg. 43/14, s. 14 (5).

Assignment of Writ

(12.2) If a writ of seizure and sale is assigned to another creditor after the writ has been filed with the sheriff, the new creditor shall file with the sheriff a requisition containing the name and address of the new creditor and that of his or her lawyer, if any, and a request to change the creditor's information for the writ due to an assignment. O. Reg. 43/14, s. 14 (5).

Electronic Filing for Change of Address, Assignment

(12.3) Subject to subrule 4.05 (4.1.1), a requisition under subrule (12.1) or (12.2) may be filed electronically. O. Reg. 43/14, s. 14 (5).

Confirmation of Assignment

(12.4) In order to confirm whether a request under subrule (12.2) is properly made, the sheriff may require the new creditor to provide to the sheriff, in the manner and within the time the sheriff specifies, a copy of the document providing for the assignment of the writ. O. Reg. 43/14, s. 14 (5).

(12.5) If the creditor fails to comply with subrule (12.4), the sheriff may refuse the request to change the creditor's information for the writ or may reverse the change, as the case may be. O. Reg. 43/14, s. 14 (5).

Direction to Enforce

(13) Where an order may be enforced by a writ of seizure and sale, a creditor who has filed a writ of seizure and sale with a sheriff may file with the sheriff a copy of the order as entered, together with a direction to enforce (Form 60F) setting out,

- (a) the date of the order and the amount awarded;
- (b) the rate of postjudgment interest payable;
- (c) the costs of enforcement to which the creditor is entitled under rule 60.19;
- (d) the date and amount of any payment received since the order was made; and
- (e) the amount owing, including postjudgment interest,

and directing the sheriff to enforce the writ for the amount owing, subsequent interest and the sheriff's fees and expenses. R.R.O. 1990, Reg. 194, r. 60.07 (13); O. Reg. 452/98, s. 5 (5).

(13.0.1) Subject to subrule 4.05 (4.1.1), the creditor may file the direction to enforce referred to in subrule (13) electronically, in which case a copy of the order as entered is not required to be filed with the direction to enforce. O. Reg. 43/14, s. 14 (6).

Sheriff may Decline to Enforce

(13.1) The sheriff may decline to enforce the writ of seizure and sale, and the creditor may make a motion to the court for directions, where the sheriff is uncertain whether the writ of seizure and sale has been properly issued or filed. O. Reg. 288/99, s. 19 (2).

Confirmation of Writ Filed Electronically

(13.2) In order to confirm whether a writ of seizure and sale filed with a sheriff electronically has been properly issued or filed, the sheriff may require the creditor to provide to the sheriff, in the manner and within the time the sheriff specifies, a copy of the order being enforced by the writ. O. Reg. 43/14, s. 14 (6).

(13.3) The sheriff may withdraw an electronically filed writ of seizure and sale if,

(a) the sheriff determines that the writ was improperly issued or filed; or

(b) the creditor fails to comply with subrule (13.2). O. Reg. 43/14, s. 14 (6).

(13.4) A writ may be withdrawn under subrule (13.3) at any time during its enforcement. O. Reg. 43/14, s. 14 (6).

(13.5) If the sheriff makes a determination that a writ of seizure and sale filed with the sheriff electronically was properly issued or filed but contains an error or otherwise differs from the order to which the writ relates, the sheriff may correct the writ to make it consistent with the order. O. Reg. 43/14, s. 14 (6).

(13.6) The sheriff shall give notice of a withdrawal under subrule (13.3) or a correction under subrule (13.5) to the creditor, by mail addressed to the creditor at the address indicated for the writ. O. Reg. 43/14, s. 14 (6).

Property in Hands of Receiver

(14) A writ of seizure and sale shall not be enforced against property in the hands of a receiver appointed by a court. R.R.O. 1990, Reg. 194, r. 60.07 (14).

Seizure of Personal Property

(15) Where personal property is seized under a writ of seizure and sale, the sheriff shall, on request, deliver an inventory of the property seized to the debtor or the debtor's agent or

employee before or, where this is not practicable, within a reasonable time after the property is removed from the premises on which it was seized. R.R.O. 1990, Reg. 194, r. 60.07 (15).

Sale of Personal Property

(16) Personal property seized under a writ of seizure and sale shall not be sold by the sheriff unless notice of the time and place of the sale has been,

(a) mailed to the creditor at the address shown on the writ or the creditor's lawyer and to the debtor at the debtor's last known address, at least ten days before the sale; an

(b) published in a newspaper of general circulation in the place where the property was seized. R.R.O. 1990, Reg. 194, r. 60.07 (16); O. Reg. 575/07, s. 1.

Sale of Land

(17) A creditor may not take any step to sell land under a writ of seizure and sale until four months after the writ was filed with the sheriff or, where the writ has been withdrawn, four months after the writ was re-filed. R.R.O. 1990, Reg. 194, r. 60.07 (17).

(18) No sale of land under a writ of seizure and sale may be held until six months after the writ was filed with the sheriff or, where the writ has been withdrawn, six months after the writ was re-filed. R.R.O. 1990, Reg. 194, r. 60.07 (18).

(19) A sale of land shall not be held under a writ of seizure and sale unless notice of the time and place of sale has been,

(a) mailed to the creditor at the address shown on the writ or to the creditor's lawyer and to the debtor at the debtor's last known address, at least thirty days before the sale;

(b) published in The Ontario Gazette once at least thirty days before the sale and in a newspaper of general circulation in the place where the land is situate, once each week for two successive weeks, the last notice to be published not less than one week nor more than three weeks before the date of sale; and

(c) posted in a conspicuous place in the sheriff's office for at least thirty days before the sale. R.R.O. 1990, Reg. 194, r. 60.07 (19); O. Reg. 575/07, s. 1.

(20) The notice shall set out,

(a) a short description of the property to be sold;

(b) the short title of the proceeding;

(c) the time and place of the intended sale; and

(d) the name of the debtor whose interest is to be sold. R.R.O. 1990, Reg. 194, r. 60.07 (20).

(21) The sheriff may adjourn a sale to a later date where the sheriff considers it necessary in order to realize the best price that can be obtained in all the circumstances, and where the sale is adjourned, it may be conducted on the later date with such further notice, if any, as the sheriff considers advisable. R.R.O. 1990, Reg. 194, r. 60.07 (21).

(22) Where notice of a sale of land under a writ of seizure and sale is published in The Ontario Gazette before the writ expires, the sale may be completed by a sale and transfer of the land after the writ expires. R.R.O. 1990, Reg. 194, r. 60.07 (22).

Abortive Sale

(23) Where personal property or land seized under a writ of seizure and sale remains unsold for want of buyers, the sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances. R.R.O. 1990, Reg. 194, r. 60.07 (23).

(24) On receipt of a notice under subrule (23), the creditor may instruct the sheriff in writing to sell the personal property or land in such manner as the sheriff considers will realize the best price that can be obtained. R.R.O. 1990, Reg. 194, r. 60.07 (24).

3. Business Corporations Act, R.S.O. 1990, c. B.16

Actions after dissolution

242. (1) Despite the dissolution of a corporation under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the corporation as if the corporation had not been dissolved;

(c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for such purpose; and

(d) title to land belonging to the corporation immediately before the dissolution remains available to be sold in power of sale proceedings. R.S.O. 1990, c. B.16, s. 242 (1); 1998, c. 18, Sched. E, s. 27 (1, 2).

Interpretation

(1.1) In this section and section 244,

“proceeding” includes a power of sale proceeding relating to land commenced pursuant to a mortgage. 1998, c. 18, Sched. E, s. 27 (3).

Service after dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the corporation before the dissolution. R.S.O. 1990, c. B.16, s. 242 (2).

Notice of action

(3) A person who commences an action, suit or other proceeding against a corporation after its dissolution, shall serve the writ or other document by which the action, suit or other proceeding was commenced, on the Public Guardian and Trustee in accordance with the rules that apply generally to service on a party to an action, suit or other proceeding. 1998, c. 18, Sched. E, s. 27 (4).

Same, power of sale proceeding

(4) A person who commences a power of sale proceeding relating to land against a corporation after its dissolution shall serve a notice of the proceeding on the Public Guardian and Trustee in accordance with the notice requirements in the Mortgages Act that apply with respect to a person with an interest in the land recorded in the records of the appropriate land registry office. 1998, c. 18, Sched. E, s. 27 (4).

GOLD CANDLE LTD.
Applicant

-and- GSR MINING CORPORATION and AJ PERRON GOLD CORP.
Respondents

Court File No. CV-16-00011351-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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