

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

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

BETWEEN:

GOLD CANDLE LTD.

Applicant

-and-

GSR MINING CORPORATION and AJ PERRON GOLD CORP.

Respondents

**FACTUM OF THE APPLICANT  
(Application Returnable July 6, 2016)**

June 29, 2016

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## **PART I – NATURE OF THE PROCEEDING**

1. The Applicant, Gold Candle Ltd. (“**Gold Candle**”), has acquired the mining rights (the “**Mining Rights**”) associated with the Kerr-Addison gold mine (the “**Kerr-Addison Mine**” or the “**Mine**”) near Virginiatown, Ontario. The Respondents, GSR Mining Corporation (“**GSR Mining**”) and AJ Perron Gold Corp. (“**AJ Perron**”), are the registered owners of the related surface rights (the “**Surface Rights**”).

2. Gold Candle brings this Application to acquire the Surface Rights, with a view to recommencing operations at the Mine (which has been inactive since 1996). Title to the Surface Rights is unascertainable due to a complicated history of corporate ownership and significant encumbrances on title, as further described below.

3. The Mine cannot effectively be dealt with in the absence of judicial intervention and direction. Judicial assistance will be required to effect a “clean up” of title and determination of rights as it relates to the Property. Consequently, Gold Candle seeks an Order (the “**Appointment Order**”), appointing A. Farber & Partners Inc. as Receiver (in such capacity, the “**Receiver**”) over all of the Respondent's Property, pursuant to section 101 *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), among other things.

4. If appointed, the Receiver's mandate will include identifying and securing the Property with a view toward eventually conducting a Court-supervised sale of same including, in particular, the Surface Rights.

## PART II – THE FACTS

### The Kerr-Addison Gold Mine

5. The Kerr-Addison Mine is in the heart of what is known as the “Golden Corridor” between Timmins, Ontario and 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.

6. The Mine commenced operations in 1938 and ceased operation in 1996. During the Mine's 58-years of operations it 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*

7. 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*.

#### *The Respondents, GSR Mining and AJ Perron*

8. GSR Mining is a corporation existing pursuant to the laws of the Province of Ontario. GSR Mining was owned by 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*.

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

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

10. 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*.

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

*United Steel Workers of America, Local 9283*

12. 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**

13. 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).

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

### **The Judgments**

14. 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.

15. 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; 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.

16. 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*.

17. 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**

18. 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.

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

19. The GSR Debenture secures indebtedness owing 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.

### **Municipal Tax Debt**

20. It is estimated that GSR Mining currently owes an amount in excess of \$280,000.00 to the Township of McGarry in respect of municipal taxes related to the Surface Rights (the “**Municipal Tax Debt**”). The Municipal Tax Debt remains outstanding.

**Reference:** *Supplementary Berns Affidavit*, supra, at para 35.

### **Environmental Issues**

21. Since production at the Mine ceased in 1996, the majority of the mine hazards located on the property have not been rehabilitated to the standards required by the *Mine Rehabilitation Code of Ontario*, resulting in a serious risk to public health and safety.

**Reference:** Supplementary Affidavit of Michael Berns, sworn June 16, 2016, Applicant's Supplementary Application Record, Tab 2 (the “**Supplementary Berns Affidavit**”); Exhibit “F” to *Supplementary Berns Affidavit*.

### **The Appointment of a Receiver**

22. 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.

### **PART III – ISSUES**

23. The within Application raises the following issues:
- (a) Whether Farber should be appointed as Receiver in the circumstances;
  - (b) Whether a stay of proceedings should be granted; and
  - (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.

### **PART IV – LAW & LEGAL AUTHORITIES**

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

24. 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).

25. 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.

26. 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.

27. 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, the 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.* [**“RMB”**], 2014 ONSC 5205 at para 29; *Bank of Montreal v Sherco Properties Inc.*, 2013 ONSC 7023 at 42 [**“Sherco”**].

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

28. 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.

29. The advantage of a receiver is that the receiver is the court's officer, with duties and obligations to both the court and to all the stakeholders. A receivership is the best way to protect the interests of all stakeholders, with a view to maximizing value for all.

**Reference:** *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONSC 1911 (CanLII) at paras 52 and 57 ["**BDC**"].

Book of Authorities of the Applicant, Tab 6.

30. The courts have also recognized that when the debtor is no longer operating or active, the impact of the receivership will be less drastic 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 7.

31. In determining whether it is "just and convenient" to appoint a receiver, the court has considered the environmental condition of the subject property and the public interest in having environmentally unfit lands remediated.

**Reference:** *King (Township) v. Rolex Equipment Co.*, [1992] O.J. No. 810 (Ont Gen Div) ["**King**"] at paras 25 & 27.

Book of Authorities of the Applicant, Tab 8.

### *Just and Convenient*

32. 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.

33. 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 subject lands at the Mine cannot effectively be dealt with in the absence of judicial assistance and direction.

34. 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; *Supplementary Berns Affidavit, supra*, at para 17.

35. 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 Property 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) In addition to the uncertainties related to complex corporate history, the Surface Rights are subject to a number of liens and other encumbrances, the specifics of

which are largely unascertainable due to the passage of time and lack of relevant documentation or court files;

**Reference:** *Supplementary Berns Affidavit, supra*, at para 22; Exhibit "E" to *Supplementary Berns Affidavit*.

(d) 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;

(e) 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;

**Reference:** *Berns Affidavit, supra*, at para 3; *Supplementary Berns Affidavit, supra*, at para 19.

(f) The present environmental conditions of the Property, which pose a serious risk to public health and safety, are such that a Receiver should be appointed in the circumstances. The Mine's re-opening will require remediation of any and all

environmental hazards, and will ultimately achieve rehabilitation of the subject lands to the standards required by Ministry of Northern Development and Mines (the "**Ministry**") under the *Mine Rehabilitation Code of Ontario*; and

- (g) Appointing Farber as Receiver over the Property 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.

*Receivership is a Contemplated Remedy*

36. 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*.

37. While this remedy was never exercised by the Union, as former secured creditor, GSR Mining, and Kerr Jex (in which the now-dissolved Respondent, AJ Perron, owned a 99% interest) both were alive to the possibility that a receiver could be appointed upon default of its respective agreements. It is respectfully submitted that this has the effect of relaxing the burden on Gold Candle in 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.

*Receivership is not a Drastic Remedy*

38. Both the subject property and each of the Respondents are no longer operating or active:

- (i.) the Mine has ceased operations for approximately 20 years and there has been no activity on the site since the mid-1990's;

- (ii.) the Respondent GSR Mining has ceased carrying on business since the closure of the Mine approximately 20 years ago; and
- (iii.) the Respondent AJ Perron has been dissolved for approximately 16 years.

39. In light of the foregoing, the impact of the receivership will be negligible. Simply put, the effect of the appointment will 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.

#### *Stakeholder Support*

40. Gold Candle served a very broad collection of parties with its initial Application Record and the Berns Affidavit. A number of these parties subsequently contacted Gold Candle (or its counsel) to express support for the relief sought therein or to advise that it is not resisting same.

41. Pursuant to an email from Henry Weilenmann, counsel to the Ministry of Transportation (the "MTO") to Gregory Azeff, counsel to the Applicant, dated April 28, 2016, the MTO advised that it was not taking a position on the Application.

**Reference:** *Supplementary Berns Affidavit, supra*, at para 15(b); Exhibit "D" to the *Supplementary Berns Affidavit, supra*.

42. Pursuant to an email from Catherine Wyatt of the Ministry dated May 2, 2016 to Mr. Azeff, the Ministry advised that it did not object reuniting the Limited Surface Rights with the Mining Rights, provided that it only encompassed surface rights in respect of "...parcels that form part of the mine site and for which Gold Candle already owns the mining rights." Ms. Wyatt also confirmed that The Public Guardian and Trustee, the Ministry of Finance and the

Ministry of Economic Development, Employment and Infrastructure also take no position on that relief.

**Reference:** *Supplementary Berns Affidavit, supra*, at para 15(a); Exhibit "C" to the *Supplementary Berns Affidavit, supra*.

43. Gold Candle has engaged in extensive discussions and meetings with the Ministry regarding the status of the subject property, Gold Candle's plans for the Mine and how to achieve a re-opening of the Mine in a way that is consistent with the spirit and intent of the *Mining Act*. Gold Candle has met all of the Ministry's expectations, and its relations with the Ministry remain excellent.

**Reference:** *Supplementary Berns Affidavit, supra*, at paras 25-29.

44. The Ministry has expressed its support in reuniting the Surface Rights with the Mining Rights at the Kerr-Addison Mine. In his letter dated June 1, 2016, Clive D. Stephenson (a Senior Manager of the Mining Lands Section) at the Ministry confirmed:

"When mining rights and surface rights are held under different ownership, it is often problematic for the different owners to carry out a consolidated and proper rehabilitation strategy. This can result in delays or a failure in rehabilitating mining hazards.

As such, the Ministry of Northern Development and Mines is supporting of having one owner for both the mining rights and surface rights of mine sites. Having a single owner simplifies the rehabilitation process by clarifying responsibility for rehabilitating mining hazards. Additionally, a single ownership will likely accelerate the rehabilitation of the site and reduce the risk to human health and environment.

In addition having common ownership for both the surface and mining rights would serve to facilitate economic development of the property should this prove feasible".

**Reference:** Exhibit "F" to the *Supplementary Berns Affidavit, supra*.

45. The only known opposition to the relief sought in the within Application is Mr. Perron, who appears to have shown little, if any, interest in the Respondents, the Mine, or any of its creditors or other stakeholders for the past decade and a half.

**Reference:** *Supplementary Berns Affidavit, supra*, at para 18.

**(B) Whether a stay of proceedings should be granted?**

46. 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.

47. 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 9.

48. The Appointment Order contemplates a stay of all proceedings in respect of GSR Mining, AJ Perron and the Property pending the completion of the Receiver's investigation and administration of the Property, and of assets and affairs of the Respondents.

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

49. 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 Property.

**(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?**

50. Rule 60.07(2) provides that leave of the court must be obtained if the writ is sought more than six years after judgment. Rule 60.07(2) provides:

(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.

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

51. 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."

52. 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] O.J. No. 3206 at paras 5 and 6 ["*Correia*"]; *Adelaide Capital Corp. v. 412259 Ontario Ltd. et al.*, [2006] O.J. No. 4175 at paras 10 – 13 ["*Adelaide*"].

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

53. 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.



54. The Judgments were issued on April 4, 1997, and are therefore 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.

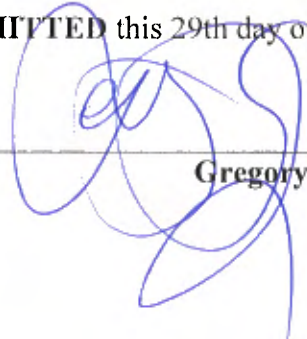
**PART V – ORDER REQUESTED**

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

- (a) appointing A. Farber & Partners Inc. as Receiver in accordance with Appointment Order in the form attached as Schedule “A” to the Fresh as Amended Notice of Application herein;
- (b) staying all proceedings and remedies taken or that might be taken in respect of the Property 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) authorizing the Applicants and the Receiver to examine Mr. John Perron under oath and requiring that Mr. Perron attend such examination;
- (e) granting the Receiver’s Charge;
- (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (h) the costs of this proceeding, plus all applicable taxes; and

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29th day of June, 2016



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**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. *Business Development Bank of Canada v Pine Tree Resorts Inc.*, 2013 ONSC 1911 (Ont. S.C.J. [Commercial List])
7. *GE Real Estate v Liberty Assisted Living*, 2011 ONSC 4136 (Ont. S.C.J. [Commercial List])
8. *General Electric Real Estate v Liberty Assisted Living Inc.*, 2011 ONSC 4704 (Ont. S.C.J. [Div. Ct])
9. *King (Township) v Rolex Equipment Co.*, [1992] OJ No 810 (Ont Gen Div)
10. *Canada (Attorney General) v. Reliance Insurance Co.*, 2007 CarswellOnt 6391 (Ont. S.C.J.)
11. *Royal Bank of Canada v. Correia*, [2006] OJ No 3206 (Ont. S.C.J.)
12. *Adelaide Capital Corp. v 412259 Ontario Ltd. et al*, [2006] OJ No 4175 (Ont. S.C.J.)

**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; and
- (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.

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

Applicant

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
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