2022 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

PRICEWATERHOUSECOOPERS INC. in its capacity as court-appointed receiver and manager of BRIDGING FINANCE INC. and BRIDGING INCOME FUND LP

APPLICANT

AND:

CANADA FLUORSPAR (NL) INC. and CANADA FLUORSPAR INC.

RESPONDENTS

ORIGINATING APPLICATION
(*Inter Partes)*

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2022 01G
Date of Filing Document:	February 21, 2022
Name of Party Filing or Person:	PricewaterhouseCoopers Inc.
Application to which Document being filed relates:	Application to appoint an interim receiver for the Respondent pursuant to sections 47 and 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, section 105 of the *Judicature Act*, RSNL 1990, c J-4 and Rule 25.01 of the *Rules of the Supreme Court, 1986*
Statement of Purpose in Filing:	To commence the application

OVERVIEW

1. The Respondents, Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc., operate a fluorspar mine in St. Lawrence, NL. It employs 260 people, most of which are in Newfoundland and Labrador.

2. The Respondents' business is financed by significant loans from secured creditors, including the Applicant. The Respondents' ongoing operations are financed by equity investments by its sole shareholder.

3. In the past several months, financial and logistical problems have hampered the Respondents' operations and it is generating a negative cash flow.

4. The Respondents have been unable to locate additional funding to continue their operations.

5. Within a week of the date of this application, the Applicant expects that the Respondents will terminate their entire workforce and then cease operations.

6. The Applicant and other secured creditors are attempting to develop a restructuring plan to avoid that outcome.

7. In order to do so, the Applicant requires that an interim receiver be appointed so that certain operations can be funded during this process.

8. An interim receiver is necessary to preserve the Respondents' operations and maintain their property (and the security of their creditors) while their stakeholders pursue options to restructure the Respondents and avoid a bankruptcy.

9. The Applicant therefore requests an order appointing an interim receiver over the property of the Respondents.

MATERIAL FACTS

Parties

10. Bridging Finance Inc. ("**Bridging Finance**") is a privately held investment management firm that offers alternative investment options to retail and institutional parties through its investment funds. Bridging would raise capital from investors for the purpose of making private debt loans to third party borrowers. Each of the Bridging investment funds has appointed Bridging Finance as portfolio manager and as its agent to enter into loan

agreements with borrowers, take security on behalf of each Bridging investment fund with respect to loans and collect loan payments from borrowers.

11. Bridging Finance is the portfolio manager and agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) ("**Bridging Income**"), the main secured lender to CFI in respect of this proceeding along with 5 other investment funds managed by Bridging Finance.

12. Bridging Financing and Bridging Income and the other investment funds are referred to collectively as "**Bridging**".

13. Canada Fluorspar (NL) Inc. is a Newfoundland and Labrador corporation, and is a borrower of Bridging as set out below. Canada Fluorspar (NL) Inc. is also the employer for the mine operation described below.

14. Canada Fluorspar Inc. is incorporated under the laws of the Province of Ontario and is extra-provincially registered in Newfoundland and Labrador. Canada Fluorspar Inc. has been 100% owned by Golden Gate Capital ("**Golden Gate**") since 2014. Canada Fluorspar Inc. is the guarantor for Canada Fluorspar (NL) Inc.'s indebtedness as described below.

15. Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. are referred to collectively as "**CFI**".

16. Other interested parties include (as described more fully below):

    (a) Golden Gate;

    (b) The Province of Newfoundland and Labrador (via the Minister of Tourism, Culture, Industry and Innovation); and

    (c) HSBC Bank Canada.

CFI's Business

17. CFI's chief place of business is Newfoundland and Labrador, where all of its operational assets are located.

18. CFI is the only active producer of fluorspar in Canada and the United States. The Company is developing the St. Lawrence Fluorspar Mine Project in St. Lawrence, Newfoundland and Labrador, to mine high quality fluorspar ore from the AGS Vein to produce acid-grade fluorspar concentrate and export to domestic and international markets. This is known as the AGS Fluorspar Project, discovered in 2013.

19. The current estimate of available ore indicates that the mine is expected to operate for approximately 10 years. CFI also has other fluorspar ore bodies in the vicinity of the AGS Fluorspar Project, which could be mined after the AGS Vein ore has been exhausted.

20. The fluorspar deposits of St. Lawrence are known for accessibility, high grades, and absence of impurities. The location of the AGS Fluorspar Project, with an ice-free, deep-water harbour close to the major North Atlantic and European shipping routes, enhances its strategic position.

21. Since 2018, shipments have been loaded from a pier in Marystown, NL. However, in July 2021, CFI loaded its first shipment from its new Blue Beach Marine Terminal, 5 kilometers from the mine site in St. Lawrence.

22. Fluorspar is an essential mineral to many industries and applications, including lithium ion batters; solar panels; refrigeration and air conditioners; high-performance polymers for aerospace; automotive and electronics applications; high-strength and purity glass for smart phones and electronic devices; pharmaceuticals, anesthesia and medical devices; fire retardants and welding consumables; and steel and aluminum production.

23. In addition to mine development at the AGS Fluorspar Project and the Marine Terminal at Blue Beach Cove, CFI also operates:

(a) A Mill Facility with a production capacity of up to 180,000 tonnes per year of acidspar concentrate;

(b) Infrastructure to support the mine and mill, including access roads, conveyors, an administration building, a warehouse and maintenance building, employee facilities, a concentrate storage building, a security building, and an electrical building; and

(c) A Tailings Management Facility to store 2.8 million tonnes of flotation tailings over the life of the AGS Fluorspar Project.

Overview of CFI Debt

24. Bridging entered into several non-revolving term loans with CFI:

(a) A term loan in the principal amount of CAD$27,000,000, pursuant to a Credit Agreement dated January 31, 2017 with a maturity date of January 31, 2019;

(b) A second term loan in the principal amount of CAD$20,000,000, pursuant to an Amended and Restated Credit Agreement dated August 1, 2017 with a maturity date of January 31, 2019 and a CFI option to extend all outstanding term loans to July 31, 2019;

(c) A third term loan in the principal amount of CAD$8,000,000 pursuant to a Second Amended and Restated Credit Agreement dated February 1, 2018 with a maturity date of January 31, 2019 and a CFI option to extend to July 31, 2019;

(collectively, the "**Bridging Loan**").

25. The maturity date of the Bridging Loan was extended on March 21, 2019, June 17, 2019, and most recently on November 8, 2021 - when the maturity date was extended to March 31, 2022 on the understanding that CFI would obtain alternative financing to repay the Bridging Loan in full.

26. Bridging is the largest debtholder for CFI. However, CFI is also a borrower under the following other facilities:

    (a) HSBC: (i) a revolving term loan in the principal amount of USD$20,000,000, (ii) an overdraft account with a credit limit of up to US$2,000,000, (iii) a letter of credit facility with a credit limit of up to CAD$1,500,000, and (iv) a credit card facility with a credit limit of up to CAD$100,000 (collectively, the "**HSBC Facilities**"); and

    (b) A non-revolving term loan from the Province of Newfoundland and Labrador, as represented by the Minister of Tourism, Culture, Industry and Innovation, in the principal amount of CAD$17,000,000 pursuant to a loan agreement dated March 30, 2017, as amended, with a maturity date of December 31, 2021 (the "**NL Loan**"). On November 29, 2021 the maturity date of NL Loan was extended to December 31, 2022.

27. Further, CFI's shareholder, Golden Gate, has invested approximately USD$238,000,000 in equity financing since its acquisition of CFI in 2014.

CFI Security and Other Obligations

28. CFI's obligations under the Bridging Loans are secured by a general security agreement and a debenture, as amended, granting a security interest in favour of Bridging with respect to all of CFI's present and after-acquired real and personal property, including all relevant mineral titles (the "**Bridging Security**").

29. In addition, CFI has granted to:

(a) HSBC with respect to the HSBC Facilities a general security agreement providing a security interest in all of CFI present and after acquired personal property and specific security with respect to CFI's accounts receivables (the "**HSBC GSA**");

(b) The Province of Newfoundland and Labrador, as represented by the Minister of Tourism, Culture, Industry and Innovation, with respect to the NL Loan a general security agreement and a debenture granting a security interest with respect to all of CFI's present and after-acquired real and personal property, including all relevant mineral titles (the "**NL Security**").

30. There is also an intercreditor agreement between the various lenders and CFI that reflects relative priorities regarding the security interests.

CFI's Current Position

31. CFI's production of fluorspar concentrate started to increase in the first half of 2021, with new production records achieved in May and June 2021.

32. CFI has consistently been able to sell its product into the markets. However, CFI's 2021-2022 sales have been constrained by operational and COVID-19 related matters that have slowed production in recent months.

33. Historically, CFI's ongoing cash shortfalls from operations were financed by equity injections from Golden Gate.

34. However, in late January 2022, Golden Gate determined that it would not invest any additional funds in CFI outside of a potential DIP funding.

35. While CFI has experienced significant financial problems in recent months, Bridging believes there may be a viable path forward.

36. However, without a further injection of cash, CFI will be unable to meet its obligations or finance its operations in less than a week.

37. Bridging expects that all secured lenders and other stakeholders will suffer significant losses if there is no intervention to preserve the property of CFI. Bridging has been in urgent discussions with CFI's other secured lenders to develop a restructuring plan for CFI.

38. Without intervention, CFI will be forced to cease operations entirely in the coming days. Such a complete shutdown would severely hamper any attempt to seek a going concern sale of the business to a third party, in particular if CFI is required to file, or is petitioned into, a bankruptcy. Such a filing would have serious consequences in relation to licences and other operational factors at CFI.

39. Bridging understands that CFI will have to terminate some 260 jobs in this province at the beginning of this week as a result of its lack of operating funds. An interim receiver is necessary to take steps to re-hire or retain the employees necessary to continue CFI's operations during the receivership.

40. The appointment of an interim receiver is necessary to:

(a) preserve CFI as a going concern business;

(b) seek options related to a sales process; and

(c) re-hire employees necessary to take CFI's operation into a care and maintenance mode while restructuring options are pursued.

41. Grant Thornton Limited has consented to act as interim receiver, should such an appointment be made. Grant Thornton's Consent to Act is attached to this application as **Schedule A**.

RELIEF SOUGHT

42. Bridging therefore requests an order:

    (a) appointing Grant Thornton as interim receiver for CFI until further order of this Court;

    (b) for Bridging's costs of this proceeding; and

    (c) for such further and other relief as counsel may advise and this Court deems just.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 19th day of February, 2022.

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Toronto, ON M5H 2S7
Solicitors for Golden Gate Capital

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this _____ day of February, 2022.

____

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APPLICANT

AND:

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RESPONDENTS

NOTICE OF APPLICATION

You are hereby notified that the foregoing application will be heard by the judge presiding in the chambers at the Court House, at Duckworth Street, St. John's, in the Province of Newfoundland and Labrador, on the ____ day of ______________, 2022, at the hour of ____ o'clock or so soon thereafter as the application can be heard.

TO: **Darren O'Keefe/Allison Philpott**
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SCHEDULE "A"

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RESPONDENTS

<u>CONSENT TO ACT</u>

Grant Thornton Limited hereby consents to act as an Interim Receiver, without security, of the assets, collateral and undertakings of the Respondents, Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc., if so appointed by the Supreme Court of Newfoundland and Labrador, General Division, pursuant to section 47 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, section 105 of the *Judicature Act*, RSNL 1990, c J-4 and Rule 25.01 of the *Rules of the Supreme Court, 1986*.

Dated at Halifax, Nova Scotia this 19th day of February, 2022.

GRANT THORNTON LIMITED

Per: ______________________________
Phil Clarke, KStJ, CPA, CA, CIRP, LIT

Senior Vice President