IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION
In Bankruptcy and Insolvency

Citation: *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, 2023 NLSC 88

Date: June 16, 2023

Docket: 202201G0709

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. 36, as amended;

AND IN THE MATTER OF an application of Grant Thornton Ltd., as Court-appointed Monitor of Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc., Newspar and CFI Newspar Holdings Inc.;

AND IN THE MATTER OF a Plan of Compromise or Arrangement of the CFI Group.

Before: Justice Alexander MacDonald
Edited Transcript of Oral Reasons for Judgment

Place of Hearing:	St. John's, Newfoundland and Labrador
Date of Hearing:	June 6, 2023
Date of Oral Judgment:	June 6, 2023

Appearances:

Geoffrey L. Spencer, Meghan M. King	Appearing on behalf of the Monitor, Grant Thornton Limited
Darren D. O'Keefe	Appearing on behalf of the CFI Group
Joseph J. Thorne	Appearing on behalf of PricewaterhouseCoopers
Gavin D.F. MacDonald and Dylan Chochla	Appearing on behalf of the Purchaser, Fluorspar Holdings PTE. Ltd.
Robert J. Kennedy	Appearing on behalf of HSBC Bank Canada
David G. Rodgers	Appearing on behalf of His Majesty in right of Newfoundland and Labrador
Shane R. Belbin and Laura F. Murphy	Appearing on behalf of Komatsu
Sophie J. Dupré	Appearing on behalf of Canada Revenue Agency
Sean M. Pittman	Appearing on behalf of Equipment SMS Inc., M. Rock Inc., Atlantic Explosives Limited and Lorne Tide Controls Limited
Geoffrey W. Boyd	Appearing on behalf of Pennecon Grand Banks Warehousing Inc.
Deborah LJ Hutchings KC	Appearing on behalf of Inaminka Marine Services Limited
Brendan O'Neill	Appearing on behalf of CF Investments S.a.r.l.

Authorities Cited:

CASES CONSIDERED: *Harte Gold Corp. (Re)*, 2022 ONSC 653; *Plasco Energy (Re)* (2015), 2015WL13889310, CV-15-10869-00C (Ont. S.C.J. [C.L.]); *Arrangement Nemaska Lithium Inc. (Re)*, 2020 QCCS 3218, leave to appeal refused, 2020 QCCA 1488, leave to appeal refused, 2021 CarswellQue 4589 (SCC); *Southern Star Developments Ltd. v. Quest University Canada,* 2020 BCCA 364, refusing leave to appeal, *Quest University Canada (Re)*, 2020 BCSC 1883; *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10; *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354; *Royal Bank v. Soundair Corp* (1991), 4 O.R. (3d) 1, 7 C.B.R. (3d) 1 (Ont. C.A.); *Lydian International Limited (Re),* 2020 ONSC 4006; *Sports Villas Resort Inc. (Re)*, 2020 NLSC 109

STATUTES CONSIDERED: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

REASONS FOR JUDGMENT

MACDONALD J.

INTRODUCTION

[1] On February 21, 2022, Chief Justice Whalen granted a receivership order and appointed Grant Thornton Ltd. (GTL) as receiver for the Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. (Company).

[2] The Company, by their court-appointed interim receiver GTL and on behalf of Newspar, a general partnership (Companies), applied for creditor protection and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*").

[3] On March 11, 2022, I granted the Initial Order now filed in this Court. In that order, I appointed GTL as Monitor of the Companies and issued a stay of proceedings until the comeback hearing on March 18, 2022.

[4] On March 18, 2022, I granted an Amended and Restated Initial Order (ARIO) in which I provided for enhanced Monitor's powers, approved the Sales and Investment Solicitation Process (SISP), and extended the stay until June 10, 2022.

[5] On June 10, 2022, I granted ARIO Amendment #1, and I amended the SISP, and extended the stay until September 2, 2022.

[6] On August 30, 2022, I granted ARIO Amendment #2, an amended SISP and extended stay until October 17, 2022.

[7] On October 6, 2022, the Monitor proposed extending the stay until February 28, 2023, to close a proposed sale, and to terminate these proceedings. The Monitor withdrew this application because of a material adverse change as the prospective purchaser failed to pay a required cash deposit.

[8] On October 12, 2022, I granted ARIO Amendment #3 and extended the stay until February 26, 2023, to allow the Monitor to consult with DIP lenders and decide how it would proceed because of the failure of the prospective sale.

[9] In February 2023, the Monitor informed the Court that it had finalized a binding letter of intent for a new prospective purchaser. On February 21, 2023, I granted ARIO Amendment #4, and extended the stay of proceedings until May 31, 2023. I also sealed the Monitor's second confidential report.

[10] On May 18, 2023, I granted ARIO Amendment #5, and extended the stay of proceedings until June 16, 2023, to allow the Monitor time to finalize the definitive agreements with the prospective purchaser. I also added CFI Newspar Holdings Inc. as an applicant under this *CCAA* proceeding.

[11] This is a motion by the CFI Group for an approval of the sale of the shares of CFI to the prospective purchaser and approval of:

(a) a Reverse Vesting Order (RVO) to allow for the sale of the CFI's mining enterprise;

(b) an order extending the stay until October 31, 2023;

(c) an order expanding the Monitor's powers to include new entities to be created for the purposes of implementing the CFI Group's proposed restructuring;

(d) an order releasing certain persons as I describe later in this decision (Releases); and

(e) an order sealing the Monitor's third confidential report that included an un-redacted copy of the share purchase agreement.

[12] The Monitor served the CFI Group and all known creditors and shareholders with its application materials. Monitor's counsel provided notice to stakeholders previously registered for prior court applications. It also published its report accompanying this application on GTL's website

[13] There was no opposition to the relief sought. All those who appeared at the hearing supported approval of the Monitor's Motion or took no position.

[14] At the end of the hearing, I granted the sixth amendment of the ARIO, the RVO, the order enhancing the Monitors power, the Releases, and the order sealing the Monitor's third confidential report. This is an edited version of my oral reasons.

FACTS

[15] I explained the background of this *CCAA* proceeding, and the circumstances that gave rise to it, in my various oral decisions. I will not repeat all of that background today but will provide a summary.

[16] The Company operated or supported operations of a fluorspar mine (Mine) and related facilities, including a mill facility and marine terminal, all near St. Lawrence, NL. In early February 2022, it employed about 280 people, most of whom are in Newfoundland and Labrador. Golden Gate Capital wholly owned Canada Fluorspar Inc., which wholly owns Canada Fluorspar (NL) Inc., which owns 99.999% of Newspar.

[17] The economics of the facility require the Company to operate at near full capacity to produce enough fluorspar to recover the costs associated with production.

[18] Mr. Phil Clarke of GTL, the Monitor I appointed under the Initial Order, and the court-appointed interim receiver of the Company, says that a combination of shareholders' equity, secured creditors, capital lessors, and unsecured creditors financed the Company's operations.

[19] Golden Gate Capital has invested approximately US $238 million in equity financing since it acquired the Company in 2014, including covering operating losses. It refused to continue to provide additional financing in February 2022. This refusal triggered the liquidity crisis, which in turn resulted in the Interim Receivership Order.

[20] As of March 4, 2022, the Company had about $95 million in secured debt, $10 million in capital leases, and $23 million in unsecured debt. The secured creditors include Bridging Finance Inc. (Bridging), the Government of Newfoundland and Labrador (GNL), and HSBC Bank Canada (HSBC).

[21] When the Company asked for the court-appointed receiver, they had approximately $1.8 million in cash and owed $800,000 to employees. On February 21, 2022, because of these financial difficulties, the Court appointed GTL as interim receiver of the Company (Interim Receivership Order).

[22] The interim receivership order authorized Interim Receiver Borrowing. The Company's cash flow statements show that during the week of February 21, 2022, Bridging lent the Company about $1,809,000 as part of the Interim Receiver Borrowing.

[23] In March 2022 the Companies applied for creditor protection under the *CCAA*. I granted an initial order, and later granted ARIO Amendments 1 through 5 as I described earlier. In the ARIOs I approved an administration charge of $250,000, and debtor-in-place financing up to $4.7 million (DIP). I also ordered certain enhancement of the Monitor's powers and approved the SISP.

[24] The Monitor has completed the SISP. The Monitor entered into negotiations with the initial prospective purchaser under the SISP, but these negotiations failed. The Monitor seeks approval of a sale to new purchaser. He seeks to implement the transaction through a proposed RVO.

[25] A RVO generally involves a series of steps whereby:

(a) the purchaser becomes the sole shareholder of the debtor company;

(b) the debtor company retains its assets, including key contracts and permits; and

(c) the excluded liabilities and assets not assumed by the purchaser are transferred into a newly incorporated entity or entities (referred to in RVOs as "ResidualCo"). The Monitor then addresses these assets and liabilities through a bankruptcy or similar process. In this case, the Monitor will eventually substitute ResidualCo for the CFI Group as the applicant under this *CCAA* proceeding.

[26] The RVO differs from a traditional assets vesting order (AVO) in which the assets of a debtor company are vested in the purchaser free and clear of any encumbrances or claims, other than those assumed by the purchaser, as contemplated by s. 36(4) of the *CCAA*. The purchase price stands in place of the assets and is available to satisfy creditor claims in accordance with their pre-existing priority.

[27] Here, the purchaser will pay the purchase price in exchange for the existing common shares in CFI. The RVO provides that CFI will transfer the purchase price and excluded assets, excluded contracts, and excluded liabilities to 92834 Newfoundland and Labrador Inc., the ResidualCo in this RVO.

[28] CFI will retain its equity interest in Canada Fluorspar (NL) Inc. and CFI Newspar Holdings Inc., and its partnership interests in Newspar general partnership.

[29] The RVO cancels other equity and partnership interests in the remaining CFI Group for no consideration. Thus, immediately thereafter, the purchaser will then own 100% of the issued capital of the CFI Group free and clear of any encumbrances.

[30] CFI will then own all of the CFI Group's assets and liabilities except those excluded. CFI retains its environmental obligations. CFI also retains the benefit of an $8,084,965 historical environmental indemnity given to it by the GNL.

[31] The share purchase agreement contemplates that the CFI Group and the purchaser will take certain implementation steps to allow the sale to proceed in a tax-efficient manner. The Monitor after discussions with its counsel, the Company,

and the purchaser understands the reasons for the steps. It believes the implementation steps are reasonable in the circumstances.

[32] The excluded liabilities and excluded assets vest in ResidualCo. These amounts exceed $140 million and ResidualCo will be insolvent.

[33] The Monitor applied to keep the purchase price confidential until the transaction closes. However, the transaction provides that ResidualCo will retain the purchase price to satisfy the DIP loan and to support a claims resolution process for these claims;

(a) CRA liability of about $76,000;

(b) Service Canada for WEPP liability of about $60,000;

(c) A claim of the Town of Port Blandford;

(d) A maritime lien claim by Inaminka Marine Service Ltd on a barge owned by CFI; and

(e) A claim on the barge by Richard Spellacy, a master Mariner.

[34] The Monitor will also acquire and then extinguish a royalty owned by Newfoundland Fluorspar Exploration Limited for $400,000.

[35] ResidualCo will pay the balance of the proceeds to Bridging, the first-ranking secured creditor. The Monitor reports that Bridging and the purchaser have agreed that Bridging may participate in CFI's future cash flows.

[36] Thus, the purchase price is insufficient to pay out secured creditors who will suffer a substantial loss. The unsecured creditors will receive nothing.

ISSUES

[37] The issues are, should I approve:

(a) the RVO?

(b) an order extending the stay until October 31, 2023?

(c) an order expanding the Monitor's powers over new entities created for the purposes of implementing CFI Group's proposed restructuring?

(d) an order providing the Releases? and

(e) an order sealing the Monitors third confidential report and the un-redacted copy of the share purchase agreement?

ANALYSIS

Should I approve the RVO?

[38] I hereby approve the RVO. A successful *CCAA* process typically results the plan of arrangement that creditors approve. However, Section 36(1) of the *CCAA* says, "a debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court."

[39] Section 36 provides that shareholder approval is not necessary. Furthermore, it does not require creditor approval. Section 11 of the *CCAA* also gives me general

authority. It provides, "the court, on the application of any person interested in the matter, may … make any order that it considers appropriate in the circumstances."

[40] Thus, creditors need not approve a sale of assets outside the ordinary course of business. A RVO is such a transaction.

[41] I will first consider whether I have the statutory authority to approve a RVO. Justice Penny in *Harte Gold Corp. (Re)*, 2022 ONSC 653, conducted an extensive review of the history of RVOs in *CCAA* applications.

[42] The Justice says that the first RVO appeared to have been approved by the Ontario court in *Plasco Energy (Re)* (2015), 2015WL13889310, CV-15-10869-00C (Ont. S.C.J. [C.L.]) in the handwritten endorsement of Justice Wilton-Siegel (*Harte* at para. 24).

[43] Justice Wilton-Siegel said, "the Court has authority under section 11 of the *CCAA* to authorize such transactions notwithstanding that the applicants are not proceeding under s. 6(2) of the *CCAA* insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise." (*Harte* at para. 24*)*

[44] Justice Penney observed in that, "A few dozen of these orders have been made since that time, mostly in a context where there was no opposition and no obvious or identified unfairness arising from the use of the RVO structure. The frequency of applications based on court approval of an RVO structure has increased significantly in the past few years." (at para. 25)

[45] Two appeal courts have dealt with RVOs.

[46] The first is *Arrangement Nemaska Lithium Inc. (Re)*, 2020 QCCS 3218, leave to appeal refused, 2020 QCCA 1488, leave to appeal refused, 2021 CarswellQue

4589 (SCC), at paras. 52 and 71. The Applications Justice Gouin approved a RVO in the face of opposition by a creditor.

[47] Justice Gouin (*Harte*, at paragraph 27) found that the approval of a RVO should be considered under s. 36 *CCAA,* subject to determining, for example:

(a) Whether sufficient efforts to get the best price have been made and whether the parties acted providently;

(b) The efficacy and integrity of the process followed;

(c) The interests of the parties; and

(d) Whether any unfairness resulted from the process.

[48] Justice Gouin found the applicant met these criteria. He approved the RVO, concluding that it would serve to maximize creditor recoveries while maintaining the debtor company as a going concern and allowing for an efficient transfer of the necessary permits licences and authorizations to the purchaser (*Harte*, para. 27).

[49] The Quebec Court of Appeal denied leave to appeal. In paragraph 19 it said, "[t]he *CCAA* judge dismissed Cantore's argument regarding the Court's limited authority to grant a vesting order." It found that courts should broadly interpret, "sell or otherwise dispose of assets outside the ordinary course of business under s. 36(1) *CCAA*" to "allow a *CCAA* judge to grant innovative solutions such as RVOs," consistent with the "wide discretionary powers afforded the supervising judge pursuant to section 11 *CCAA*." (see also *Harte* at para. 28)

[50] The second is *Southern Star Developments Ltd. v. Quest University Canada,* 2020 BCCA 364, refusing leave to appeal, *Quest University Canada (Re)*, 2020 BCSC 1883. The British Columbia Court of Appeal refused leave to appeal, and said at paragraph 32 that the RVO granted by the application judge, Justice Fitzpatrick,

"reflects precisely the type of intricate, fact-specific, real-time decision making that inheres in judges supervising *CCAA* proceedings."

[51] *In Harte,* Justice Penny said, "the jurisprudence … clearly provides the court with jurisdiction to issue such an order, provided the discretion available under s. 11 is exercised in accordance with the objects and purposes of the *CCAA*." (at para. 37)

[52] Justice Penny, (at para. 38) provides a list of questions I should consider. These are:

(a) Why is the RVO necessary?

(b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?

(c) Is any stakeholder worse off under the RVO than they would have been under any other viable alternative?

(d) Does the price paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) preserved under the RVO?

[53] Justice Fitzpatrick in *Quest University Canada (Re)* found that the *CCAA* provided sufficient authority to grant the RVO that was consistent with the remedial purposes of the *CCAA*. (at para. 170)

[54] In paragraph 155 she said, "I find further support for Quest's position in the recent comments of the Court in *Callidus* (*9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10). The Court was there addressing a different issue — whether a *CCAA* judge has jurisdiction under s. 11 to bar a creditor from voting where the creditor is 'acting for an improper purpose' — but the Court's comments

on the exercise of jurisdiction under the *CCAA* ring true in relation to the RVO structure."

[55] Justice Fitzpatrick quoted the Supreme Court of Canada in *Callidus* where it said, "The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*. … Additionally, the court must keep in mind three 'baseline considerations' (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence" (*Quest* at para. 155 and *Callidus* at para. 49).

[56] The Justice continued and said, "[m]any of the RVO cases cited above involve a sale of an ongoing business with a purchaser. The RVO structure was crafted to allow those businesses to continue through the debtor company, since it was that corporate vehicle who owned the valuable 'assets' that could be not transferred" (at para. 160).

[57] Justice Fitzpatrick in *Just Energy Group Inc. v. Morgan Stanley Capital Group Inc.*, 2022 ONSC 6354, said "Reverse vesting orders are relatively new structures. I agree that reverse vesting orders should not be the 'norm' and that a court should carefully consider whether a reverse vesting order is warranted in the circumstances ... That said, reverse vesting orders have been deemed appropriate in a number of cases." (para 33)

[58] Justice Fitzpatrick continued in paragraph 34 and said:

> ... cases approved reverse vesting orders in circumstances where:
>
> - the debtor operated in a highly-regulated environment in which its existing permits, licenses or other rights were difficult or impossible to reassign to a purchaser;

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- the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and
- where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

[59] I agree. I will consider the factors in section 36(3) of the *CCAA*, the principles articulated in these cases, the court's guidance in *Royal Bank v. Soundair Corp* (1991), 4 O.R. (3d) 1, 7 C.B.R. (3d) 1 (Ont. C.A.) for the approval of the sale of assets in an insolvency, and the additional factors referred to in paragraph 38 of *Harte*.

[60] Thus when I combine these factors, I will consider:

(a) is the RVO necessary?

(b) does the RVO produce an economic result at least as favourable as any other viable alternative?

(c) is any stakeholder worse off under the RVO than they would have been under any other viable alternative?

(d) does the price for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO?

(e) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(f) whether the Monitor approved the process leading to the proposed sale or disposition;

(g) does the Monitor say that the proposed sale would be more beneficial to the creditors than disposition under a bankruptcy?

(h) the extent to which the creditors were consulted;

(i) the effects of the proposed sale on the creditors and other interested parties;

(j) whether the price is reasonable and fair, taking into account their market value;

(k) whether sufficient effort has been made to obtain the best price, and whether the debtor has acted improvidently;

(l) the interests of all parties;

(m) the efficacy and integrity of the SISP; and

(n) whether there has been unfairness in operation of the SISP.

[61] I need not consider all of these factors. Each need not support the issuing of the RVO. I use them to assist me in exercising the broad discretion I have under the *CCAA*.

Is the RVO necessary?

[62] I find that the RVO is necessary. CFI has dozens of permits and licenses that it must retain if it is to operate the Mine. The Monitor says that:

(a) under an AVO most of these may be difficult to transfer. Even if it is possible do so, the transfers will likely result in significant delays and costs;

(b) the permits, licenses and leases are critical to the ability for the purchaser to restart operations. The uncertainty around timing of acceptance would materially affect the restart operations and therefore the economics of the transaction. (Monitor's Ninth Report at para. 47);

(c) the GNL historical environmental indemnity is critical to the purchaser's offer. GNL, who granted the indemnity and is a stakeholder, a secured creditor, and a DIP Lender, is supportive of the RVO. (Monitor's Ninth Report at para. 48);

(d) the tax attributes of a RVO are critical to the purchaser and support its valuation of CFI. It can only preserve these tax attributes through an RVO. (Monitor's Ninth Report at para. 49); and

(e) the RVO has significant benefits that are reasonable, justified and appropriate in the circumstances. Accordingly, he supports the transaction and the RVO.

Reasonableness of the Process Leading to the Proposed Sale

[63] I find that the process leading to the proposed sale is reasonable in the circumstances. I find that the Monitor approved the process leading to the proposed sale or disposition.

[64] The Monitor sought court approval of the SISP. He sought court amendment of the SISP on a number of occasions. Creditors received notice of these applications. Secured creditors were given the opportunity to provide input to the Court on these processes. The SISP is not innovative or unique. Many courts have approved similar sales processes.

Are stakeholders worse off under the RVO structure than they would have been under any other viable alternative? Comparison with Sale in Bankruptcy - does the RVO structure produce an economic result at least as favourable as any other viable alternative?

[65] I find that the RVO produces an economic result at least as favourable as any other viable alternative. The Monitor says, and I agree that:

(a) the additional cost to implement and approve the transaction would affect the purchaser's proposed timelines to restart operations;

(b) the economic result of the transactions provides a better result than any other form of transaction under bankruptcy (Monitor's Ninth Report at para. 55). It allows the CFI Group to continue as a going concern. The transaction provides for repayment of DIP financing as well as some payment to the senior secured creditor;

(c) even under the RVO, secured creditors will realize a substantial loss. There are no funds available for unsecured creditors. Thus, the RVO does not disadvantage the unsecured, as they would not receive any distribution in an AVO. (Monitor's Ninth Report at para. 51); and

(d) approval of a plan of arrangement based on an AVO is not an option. It would further reduce recovery to the secured creditors who were already suffering losses. It would unnecessarily add additional cost and risk to the sale as it would take time and money that the Monitor does not have.

[66] I also find that:

(a) a bankruptcy would jeopardize the possibility of future operations. It could jeopardize the permits and licences necessary to maintain such operations. It could jeopardize the historical environmental indemnity. These risks could destroy the sale or reduce the purchase price;

(b) a bankruptcy sale would delay, and perhaps jeopardize, the sale. Before an AVO can be approved under a bankruptcy, CFI must be bankrupt, a meeting of creditors must be held, inspectors must be appointed, and they must approve the sale;

(c) DIP lenders would need to advance additional money to finance ongoing operations during this time. There is no evidence they would be willing to do so. This process might fundamentally change the CFI Group's value to the purchaser; and

(d) every non-liquidation bid in the SISP assumed a RVO. There is no other more traditional AVO Proposal.

Consultation with Creditors

[67] I discussed the efforts the Monitor took to inform creditors of this sale earlier in this decision. Despite these efforts, no one opposes this application. The Monitor

did consult with CRA and other secured creditors. I have no evidence if he consulted with unsecured creditors.

The Effect of the Proposed Sale on Creditors and Other Interested Parties

[68] The proposed transaction has the prospect of renewed employment for some of the CFI employees. It has the prospect of providing ongoing business opportunities for suppliers of goods and services to the Mine.

[69] The Monitor says that the RVO will provide an expedient efficient transfer of CFI's intangible assets to the purchaser. This would support a timely restart of operations that will provide an opportunity for employees, stakeholders, and the unsecured creditors to engage with the new business. He says, and I agree, that this will benefit the local community.

[70] Thus, the evidence is that no creditor is in a worse position because of the use of a RVO, than they would have been under an AVO (or, for that matter, under any plausible plan of compromise).

[71] Furthermore, the transaction contemplates transfer to the purchaser of all the shares in CFI and its interests in the other entities in the CFI Group. The RVO cancels the remaining interests in the CFI Group. Thus, the CFI Group's current shareholders will receive no recovery of their investment.

Fairness of Consideration

[72] CFI's business and assets have been extensively marketed both prior to and during the *CCAA* proceedings. At the conclusion of the SISP, this bid is the most acceptable one. As I described earlier, this transaction will provide a superior

recovery for creditors than would a liquidation of the Companies' assets in bankruptcy.

[73] Furthermore, the Monitor said that the purchase price is fair and reasonable taking into account the assets including the mineral leases and licenses. Therefore, I find the price is fair and reasonable.

Other Considerations Re. Appropriateness of RVO vs. AVO

[74] The principal objective and benefit of employing the RVO in this case is the preservation of CFI's many permits and licences necessary to conduct operations at the Mine. It preserves the historical environmental indemnity.

[75] Under an AVO, the purchaser would have to apply to the various agencies and regulatory authorities for transfers of existing licences and permits or, if transfers are not possible, for new licences and permits. This process would necessarily involve risk, delay and cost. Furthermore, there is no way of knowing whether a new environmental indemnity is available from the GNL.

[76] Thus, the RVO would achieve the timely and efficient preservation of the licenses and permits necessary for the operations of the Mine.

[77] Finally and importantly, the Monitor supports the use of the RVO.

[78] For all these reasons, I find that the proposed RVO is necessary to achieve the clear benefits of the purchase and that it is appropriate to approve this transaction in the circumstances.

[79] The RVO will:

(a) provide for timely, efficient and impartial resolution of the Companies' insolvency;

(b) preserve and maximize the value of the Companies' assets;

(c) ensure a fair and equitable treatment of the claims against the Companies;

(d) will protect the public interest and preserve employment and third party suppliers and service providers; and

(e) balance the costs and benefits of CFI Group's restructuring or liquidation.

Should I approve an Order Extending the Stay until October 31, 2023?

[80] I extend the stay until October 31, 2023.

[81] The current stay period expires on June 16, 2023. Under s. 11.02 of the *CCAA*, I may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the CFI Group satisfies me that it has acted, and is acting, in good faith and with due diligence.

[82] The CFI Group seeks to extend the stay period to October 31, 2023, to allow it to proceed with the closing of the transaction, and resolve the issues associated with the RVO claims I referred to earlier.

[83] I find that creditors will not suffer material prejudice because of the extension of the stay. CFI's cash flow forecast shows sufficient liquidity to allow the Monitor

to deal with the remaining tasks contemplated by the RVO. The Monitor has confirmed, and I find, that the CFI Group continues to act in good faith and due diligence.

Should I approve an Order Expanding the Monitor's Powers Over New Entities created for the Purposes of Implementing the CFI Group's Proposed Restructuring?

[84] The *CCAA* provides the Court with broad discretion in respect of the Monitor's functions. Section 23(1)(k) of the *CCAA* provides that the Monitor can, "carry out any other functions in relation to the [debtor] company that the court may direct." Section 11 authorizes me to make any order that is necessary and appropriate in the circumstances.

[85] I will grant the Monitor's enhanced powers provided in the draft Order. I do so because:

(a) the Monitor's expanded powers will allow it to administer the affairs of ResidualCo, to wind down these *CCAA* proceedings, and deal with ResidualCo through bankruptcy or otherwise following the close of the transaction; and

(b) The Monitor needs such powers to achieve the benefits of the transaction to stakeholders. No creditor suffers prejudice because of the Monitor's enhanced powers.

Should I approve an Order Providing the Releases?

[86] The Monitor asked that I grant a court order releasing (a) the present and former directors, officers, employees, legal counsel and advisors of Canada

Fluorspar Inc., or ResidualCo;(b) the Monitor and its legal counsel and advisors, and their respective present and former directors, officers, partners, employees and advisors; (c) the Purchaser, it's directors, officers, employees, legal counsel and advisors; (d) the DIP Lenders, its counsel, and their respective present and former directors, officers, partners, employees and advisors (the Persons listed above in (a), (b), (c), and (d) being collectively, the "Released Parties."

[87] The Releases will cover any present and future claims against the released parties based on any fact or matter of occurrence in respect of the purchase transaction. It does not release any claim for fraud or willful misconduct. It does not release any claim that I may not release pursuant to section 5.1(2) of the *CCAA*. It does not release any environmental liability to GNL.

[88] I grant these Releases with respect to CFI, but not to the remaining CFI Group. I find that the Releases are reasonable and appropriate in the circumstances. I base my decision on an assessment of Section 5.1 of the *CCAA* and the factors taken from *Lydian International Limited (Re),* 2020 ONSC 4006 (at para. 54).

[89] Section 5.1 of the *CCAA* says, "A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations."

[90] Subsection 2 says, "A provision for the compromise of claims against directors may not include claims that relate to contractual rights of one or more creditors; or are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

[91] Finally, subsection 3 says, "[t]he court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances."

[92] Chief Justice Morawetz said in *Lydian* (at para. 54), I should consider the following factors:

(a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

(b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

(c) Whether the plan could succeed without the Releases;

(d) Whether the parties being released were contributing to the plan; and

(e) Whether the Releases will benefit the debtors as well as the creditors generally.

[93] Again, I need not consider all of these factors. Each need not support the issuing of the Releases. I use the factors to assist me in exercising the broad discretion I have under the *CCAA*.

[94] I find the that:

(a) the Releases are fair and reasonable in the circumstances;

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(b) the released claims rationally connect to the restructuring;

(c) the released parties are necessary and essential to the restructuring of the CFI Group; and

(d) the released parties contributed to the restructuring.

[95] The released parties' efforts directly lead to the RVO and the sale of the enterprise. The share purchase agreement provides that the purchaser must be satisfied with the form of the RVO. Counsel tells me that the various internal versions of the RVO always contained the release in favour of the purchaser.

[96] Because of this sale and the efforts of the parties, there is cash available to satisfy some creditor claims. If I do not grant the Releases there is a risk that the purchaser might not proceed. If the purchaser does proceed, it might reduce the purchase price.

[97] The Mine will likely reopen. It will provide employment. It will provide benefits to suppliers, and to St. Lawrence and the larger community. The Releases help achieve the purposes of a *CCAA* proceeding, which includes maximizing creditor recovery and preserving continued employment in a restructured enterprise. Therefore, I find that the Releases connect rationally to the restructuring.

[98] CFI was also a critical player in the processes leading up the *CCAA* filing. Counsel tells me that the directors of CFI resigned shortly after the *CCAA* filing at the request of secured creditors.

[99] Thus, I find that the released parties made significant contributions to the CFI Group's restructuring, both prior to and throughout these *CCAA* proceedings.

[100] The Monitor, the purchaser, CFI, and the DIP Lenders are unaware of any claims against them or their advisors related to these *CCAA* proceedings. Therefore, the Releases should not materially prejudice any stakeholders.

[101] Furthermore, that the Releases are sufficiently narrow. Any environmental liabilities to the GNL are unaffected. The Releases do not affect claims referred to in section 5.1(2) of the *CCAA* or ones arising from fraud or willful misconduct.

[102] The scope of the Releases is sufficiently balanced. It allows the released parties to move forward with the transaction and to conclude these *CCAA* proceedings. The Monitor, CFI, and the purchaser all take the position that the Releases are an essential component to the transactions.

[103] The Monitor and its counsel served creditors with materials relating to this motion in accordance with the process set out in the AIROs.

[104] The Monitor included the form of the Releases was included in the draft RVO. This provided stakeholders with ample notice and time to raise concerns with CFI or the Monitor. No creditor (or any other stakeholder) has objected to the Releases.

[105] Thus, I find that the Releases are fair and reasonable.

Should I approve an order sealing the Monitors Third Confidential Report and the un-redacted copy of the Share Purchase Agreement?

[106] The Monitor also requests that I seal his third confidential report and share purchase agreement until the closing of the purchase as outlined in the share purchase agreement. I hereby grant that order.

[107] The Monitor says that the share purchase agreement contains commercially sensitive information about the value of the Mine, the various bids, and the terms of the proposed sale.

[108] He is concerned that publication of this information would pose serious risk to the commercial interests of the stakeholders. It would then irreparably harm the CFI Group's efforts to maximize the sale price.

[109] The Newfoundland Supreme Court gave guidance on the principles applicable to these requests in *Sports Villas Resort Inc. (Re)*, 2020 NLSC 109 (at para. 7), when it said. "I also granted an order sealing the Receiver's First Report until the transaction contemplated in the application is completed."

[110] It continued, "this Court has authority to seal part or all of the court record. The receiver submits that this is an appropriate case for me to exercise my discretion in accordance with generally accepted insolvency practice to grant a sealing order over the Receiver's First Report… until the completion of the sale contemplated by this application."

[111] The court continued (at para. 9) and said, "[b]ecause the proposed sale of the subject property has not been approved, the receiver is rightly concerned that the sensitive information contained in the receiver's First Report could adversely affect the sale of these assets to other party."

[112] I agree. I also find that the extent of the sealing order required is the minimum that will preserve the confidentiality of the purchase price until the transaction is closed. No less onerous sealing order is suitable in the circumstances.

ALEXANDER MacDONALD
Justice