



No. S245121
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57

AND

IN THE MATTER OF ELEVATION GOLD MINING CORPORATION, ECLIPSE GOLD MINING
CORPORATION, GOLDEN VERTEX CORP. and GOLDEN VERTEX (IDAHO) CORP.

PETITIONERS

APPLICATION RESPONSE

Application response of: Nomad Royalty Company Ltd. (the "**Application Respondent**" or "**Nomad**")

THIS IS A RESPONSE TO the Notice of Application of KSV Restructuring Inc., in its capacity as Court-appointed Monitor (in such capacity, the "Monitor"), filed January 28, 2024 (the "**Notice of Application**" or the "**Monitor's Application**")

The Application Respondents estimate that the application will take 30 minutes.

Part 1: ORDERS CONSENTED TO

The Application Respondents consent to the granting of none of the orders set out in Part 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

The Application Respondents oppose the granting of the orders set out in paragraphs 1(a) (ii), (iii) and (iv) of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondents take no position on the granting of the orders set out in paragraphs 1(a)(i) and 1(b) of the Notice of Application.

Part 4: FACTUAL BASIS

(d) Background and Interest of Nomad

30. Capitalized terms used and not otherwise defined herein have the meaning given to them in the Notice of Application.
31. Nomad opposes the request for the following orders in the Monitor's Application (the "**Opposed Orders**"):
 - "1. ...
 - (ii) approving the Cross-Border Communication Protocol...;
 - (iii) confirming that the Administration Charge, the Directors' Charge and the Intercompany Charge (each as defined in the ARIO, and, collectively, the "Charges") continue to charge the GVC Residual Assets in priority to any claims of Patriot and Nomad ...; and
 - (iv) approving the activities of the Monitor since its appointment under the initial order made herein on August 1, 2024 (the "**Initial Order**");"
32. Elevation Gold Mining Corporation's ("**Elevation Gold**") principal operation is the production of gold and silver from the Moss Gold Mine (the "**Moss Mine**") owned by Golden Vertex Corp. ("**Golden Vertex**"). Golden Vertex is a company incorporated pursuant to the laws of the state of Arizona in the United States of America, and its assets and primary interest holders and creditors are in the U.S.

Affidavit #1 of Tim Swendseid, sworn July 29, 2024 at paras 7 and 18

33. The Application Respondent is party to the Nomad Agreement and as a consequence it asserts that it is entitled to the Royalty, which are production royalty interests which attach to patented and unpatented lands comprising and adjacent to the Moss Mine.

1st Affidavit of Susan Danielsz made December 13, 2024 ("**First Danielsz Affidavit**"),
Exhibit "A", paragraphs 16-34

34. Nomad asserts that the Royalty is a real property interest which cannot be extinguished.

First Danielsz Affidavit, Exhibit "A", paragraphs 46-53

35. Nomad further asserts that the Royalty has been unpaid since May 2022, and is owed at least \$950,605 for the period from then until October 2023. As of the date hereof, Nomad estimates that the Royalty amount currently owing is at least \$1.5 million.

First Danielsz Affidavit, Exhibit "A". paragraphs 35-43

36. Nomad's royalty interest in the Moss Mine is the subject of proceedings in the Chapter 15 Proceedings. In October 2025, the Debtors brought Determination Motions in the Chapter 15 Proceedings seeking a determination of the interests of Nomad and Patriot, respectively.
37. On November 19, 2024, Nomad filed in the Chapter 15 Proceedings an adversary complaint (the "**Adversary Proceedings**") against the Petitioners. Nomad's position is that its royalty interest in the minerals at the Moss Mine (and the proceeds of such minerals) is a separate real property interest that is not owned by Golden Vertex. Among other things, Nomad seeks a declaratory judgment regarding the respective royalty interests asserted by Nomad, an accounting, a constructive trust over all amounts owing to the respective royalty holders, conversion, and other relief. Among other things, under applicable U.S. law, directors and officers of Golden Vertex, as well as any other recipients of wrongfully withheld royalty payments, can be liable for conversion. The Adversary Proceedings remain pending before the Chapter 15 Court.

Affidavit #6 of Tim Swendseid, sworn December 3, 2024 (the "**Sixth Swendseid Affidavit**") at para 23

First Danielsz Affidavit
Ex. "A" and "B"

(d) Sale Approval and Recognition by Chapter 15 Court; Protection of Nomad's Claim

38. On December 17, 2024, this Court approved, inter alia, the Sale Approval Order and the Distribution Order.
39. The terms of the Sale Approval Order were the subject of submissions at the hearing before this Court respecting the potential impact of that Order on the claims of Patriot and Nomad. Following the submissions and oral reasons by the Court, and consultation among counsel, the following provision was included in the final version of the Sale Approval:

"11. Notwithstanding anything to the contrary in this Order, this Court specifically makes no finding as to whether the interests of Patriot or Nomad are interests in real property or in relation to the Adversary Claims, and any interests, rights, or related claims asserted by Patriot or Nomad against the Petitioners in the Adversary Claims shall not be affected by this Court's approval of the Sale Agreement or the Transaction, and shall be adjudicated in the Chapter 15 Court and, where appropriate, any other federal or state U.S. courts. This Order is without prejudice to the determination by the United States Bankruptcy Court for the District of Arizona of (i) whether the interests of Patriot or Nomad are interests in real property or (ii) the Adversary Claims, including with respect to the positions of all parties."

40. The Distribution Order, made at the same time, provides as follows with respect to the sale proceeds received under the Sale Approval Order:

"3. ...the Monitor is hereby authorized and directed to distribute the net proceeds of the sale of the Purchased Assets (the "Sale Proceeds") to Maverix Metals Inc. ("Maverix"), subject to the Monitor holding back sufficient proceeds to satisfy any obligations which may be incurred by the Petitioners through to the conclusion of these proceedings, including to pay any professional fees secured under the Administration Charge (as defined in the Amended and Restated Initial Order of this court made herein on August 12, 2024), as the Monitor deems appropriate, in its sole discretion."

41. The Monitor's motion seeking enforcement and recognition of the Sale Approval Order and the Distribution Order by the Chapter 15 Court was initially scheduled for and was first heard on December 23, 2024.
42. Prior to that date, in its Supplement to the Monitor's Motion for Recognition and Enforcement of the Canadian Sale and Distribution Order, the Monitor submitted to the Chapter 15 Court on January 20, 2024, in relation to the effect of the Sale Agreement on the GVC Residual Assets and the claims of Nomad and Patriot:

"GVC's Residual Assets, which include its cash, bank deposits, and accounts receivable are to be transferred to Elevation Gold **subject to all existing liens and claims, including the senior liens of Maverix and whatever interests Patriot and Nomad might allege they have in those assets.** Elevation Gold will also assume the Residual Liabilities which include liabilities owed to Maverix, obligations under a Finder's Fee Agreement described in schedule 1.1 of the Sale Agreement, and unsecured pre-filing creditor claims.

The completed transaction leaves GVC intact but for the Residual Assets transferred to Elevation Gold which will remain subject to all encumbrances, and the Residual Liabilities assumed by Elevation Gold. GVC retains the licenses and permits needed to operate the business, the Moss Mine, and assets used in the business. It also retains the agreements with Patriot and Nomad and the liabilities under those agreements pending the outcome of the determination process in this Court. As of the closing date, Patriot and Nomad will have whatever rights and claims they have today under those agreements, but those claims will be against a financially sound GVC, which will be free of more than \$32 million of secured debt owed to Maverix. **Patriot and Nomad will also retain any interests they might allege they have in GVC's cash and receivables, and they can make those claims against Elevation Gold pursuant to the terms of the Distribution Order. The only impact on Patriot and Nomad will be the result of proceedings in this Court, which will determine the nature and extent of their interests.**" (Emphasis added)

Affidavit #1 of Hayley Roberts made February 10, 2025 ("**Roberts Affidavit**"),
Ex. "C", pp. 3-4

43. On December 23, 2024, Nomad filed its Response to the Motion for Recognition and Enforcement, objecting to same, in part because the transfer for the GVC Residual Assets from GVC to Elevation was without consideration, and Nomad (and Patriot) asserted an

ownership interest in the GVC Residual Assets with respect to its claimed royalty interest and unpaid royalties.

Roberts Affidavit, Ex. "F"

44. The transcript of the proceedings before this Court and its oral reasons were also filed and available to the Chapter 15 Court and parties.

Roberts Affidavit, Ex. "D" and "E"

45. At the hearing on December 23, 2024, counsel to the Monitor made a number of representations to the Chapter 15 Court with respect to the impact of the Sale Approval Order and its recognition by the Chapter 15 Court on the rights and claims of Nomad. In particular, counsel for the Monitor stated:

"Now, this is the important part. The intention here is to have these assets, these cash assets [*i.e.*, the GVC Residual Assets], which we believe are subject to the senior lien of . . . Maverix, but we don't need to make that determination. The transfer of those assets to Elevation Gold **will be held** pending resolution of disputes.

Now, all they have to do, and they acknowledged this at the hearing last week in Canada. There was discussion about the distribution process and a notice period, where the monitor receives a notice, the Monitor cannot distribute, right? Patriot and Nomad said, both of them, that they intend to file just such a notice, and I would suspect what they're going to do is they're going to have a one-page notice stapled to the top of their adversary proceeding, and say, this is our claim. You can't distribute." And the Monitor **will not distribute** until Your Honor resolves the underlying dispute.

So I think what they're asking for and what Your Honor is sort of trying to reach for, in terms of what this is really about, is already there. It is already contemplated. **No one is going to disperse those funds, absent a resolution of those underlying issues.**

...

And I think Justice Fitzpatrick tried, and maybe not to everyone's satisfaction here, but she tried hard to make sure that the order she was issuing did not trample on their rights with respect to the nature of the interest in the real property, if any, **or their right, if any, with respect to the liquid assets**, if I can just call them that ... that are subject – to their adversary proceedings.

Now, I'm happy to go into detail on any portion of that, but the other thing I would like to remind everyone of: We had a discussion about this one or two hearings ago, and I think Your Honor has touched on it here. Cash collateral, cash collateral, cash collateral. The fact of the matter is that with respect to cash collateral and adequate protection, Section 363 says the burden is on the creditor to establish their interest, and your honor has invited them to do that, invited some sort of provisional remedy to do that, and they have not done it.

The good news is that the Monitor is agreeing to give them a provisional remedy. All they need to do is provide a notice, and it will be held, and it won't go anywhere until your honor resolves the underlying dispute.
(Emphasis added)

Roberts Affidavit, Ex. "H", pp. 33-35

46. Following that representation, the Chapter 15 Court directed counsel for the Monitor and Patriot/Nomad to attempt to arrive at terms of an order that, as the Chapter 15 judge said to counsel for Nomad, to "give effect to get their sale done but preserve your rights". The hearing was then put over to December 27, 2025.

Roberts Affidavit, Ex. "H", p. 42; Ex. "I", p. 2

47. In the interim, the Monitor and Nomad/Patriot failed to arrive at agreement on the terms of a consent order. At the further hearing on December 27, 2024, counsel for the Monitor attempted to "moonwalk back" the above-quoted representations made to the Chapter 15 Court, claiming that he "misspoke" at the prior hearing. The Chapter 15 Court responded that the Monitor was bound by those representations, on which the Court and the parties relied as they worked over the Christmas holiday to come up with an acceptable form of order. At the end of the hearing, the Court ordered that the Monitor and Nomad/Patriot submit competing forms of orders, which occurred on December 30, 2024. On same day, the U.S. Court approved and entered the version of the Sale Recognition Order submitted by Nomad and Patriot, with one phrase struck out.

Roberts Affidavit, Ex. "J", pp. 21-22 and 57; Ex. "K"

48. The Sale Recognition Order cites, recognizes, and enforces paragraph 11 of the Sale Approval Order, and provides:

"b. All "GVC Residual Assets" (as defined in the Canadian Sale Order) transferred from GVC to Elevation Gold under the Canadian Sale Order, including all pre-sale closing cash, accounts receivable, and rights to proceeds from minerals extraction (i) shall remain subject to all of the respective asserted or potential claims and/or interests of the Royalty Holders, (ii) shall be segregated, preserved, and accounted for by the Monitor and the Debtors, and (iii) shall not be consumed, used, or disbursed in any way by the Monitor or the Debtors pending further order of this Court."

49. Immediately after the approval and entry of the Recognition Order, the Chapter 15 Court entered a "Minute Entry/Order" dated December 30, 2024, which are the reasons of the Court relating to the Recognition Order. The Court stated:

" This Court held several hearings to address the concerns with the motion expressed by Patriot Gold Corporation and Nomad Royalty Company, Ltd. (collectively the "Royalty Holders") to the Monitor's request. These concerns focus on the extent to which Debtors may, after the sale closes, expend what are referred to in the Canadian Order as "GVC Residual Assets" to pay estate claims or post-closing expenses. No objection has been raised to the use of sale proceeds in accordance with the direction of the Canadian Order.

The Royalty Holders claim ownership of, among other things, the GVC Residual Assets and assert that these funds must be preserved until their property right claims are resolved. Although initially disagreeing with this position, during a recent hearing counsel for the Monitor informed the Court that the Royalty Holders' concerns were misplaced because the Monitor acknowledges that no portion of the GVC Residual Assets will be distributed without this Court's prior approval. The Monitor's presentation was compelling, and the Court directed the parties to submit a form of order memorializing approval of the Canadian sale consistent with the agreed resolution of the GVC Residual Asset issue.

While continually making the Court aware of the urgency in obtaining approval of the Canadian Order, the Monitor belatedly sought to change its position by claiming that approval of a general GVC Residual Asset set-aside would be inconsistent with the Canadian Order. That is not this Court's intention. The Canadian Order approves the sale of Debtors' equity and provides for payment of expenses incurred up to the sale date and permits sale proceeds to be set aside for this purpose. The GVC Residual Assets will exist separate from this process. The Royalty Holders claim ownership of these funds based upon their assertion of Arizona property rights. The Court expresses no opinion as to the merits of these claims, but is committed to moving expeditiously to resolve them.

The Monitor now also claims that the requested asset set-aside is too broad because the Royalty Holders have not quantified their claims. During the most recent hearing, the Royalty Holders asserted a right to proceeds in an amount represented to be in excess of the projected funds that will comprise the GVC Residual Assets. At this late date, the Court cannot permit the Monitor to withdraw from its proposal regarding maintenance of the disputed funds. If the Monitor believes some adjustment is required after closing of the Canadian sale, it can seek relief from this Court."

Roberts Affidavit, Ex. "K", pp. 1-3

50. The Monitor has not filed an appeal from the Sale Recognition Order and has not sought a rehearing or any further hearing before the Chapter 15 Court.

Part 5: LEGAL BASIS

(d) There is no Conflict between the ARIO and the Sale Recognition Order

51. The Monitor relies on paragraph 38 of the ARIO, which provides that each of the Administration Charge, the Directors' Charge, and the Intercompany Charge shall constitute a "charge on the Property". However, "Property" is defined in section 4 of the ARIO as "their [*i.e.*, *the Debtors*] current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof".
52. Nomad and Patriot assert an ownership interest in the GVC Residual Assets arising from the unsatisfied real property royalty interests which they hold, on the basis that (a) the

royalty interest is an interest in real property which cannot be extinguished, (b) that the amount of the royalty is property of Nomad and Patriot, and (c) that to the extent that the royalty is not paid to Nomad and Patriot, they can claim an ownership interest in, and/or a trust or other Arizona-law remedy over, the cash received or held by Golden Vertex, including the cash comprising the GVC Residual Assets.

First Danielsz Affidavit, Exhibits "A" and "B"

53. In the event that Patriot and Nomad prove their real property and ownership interest in respect of all or part of the GVC Residual Assets, those assets are not owned by Golden Vertex or Elevation, do not form "Property" of the Debtors and are not subject to the Charges provided for in section 38.
54. The Monitor's argument that there is a conflict between the ARIO and preservation provisions of the Sale Recognition Order assumes that the claims of Nomad and Patriot have been resolved in favour of the Debtors. This has not yet occurred. Further, the Monitor can point to no case which allowed assets that a third party claims are not owned by the debtor, but are in the possession of the debtor, to be depleted by the debtor to the prejudice of the third party claimant before the determination of that party's interest.
55. Further, section 3 and 4 of the Distribution Order requires the Monitor to "retain... sufficient of the Sale Proceeds to pay the full amount of any unresolved Priority Claims pending the resolution thereof," and "Priority Claims" is defined as "a claim ranking in priority to Maverix's interest in the Purchased Assets". The claims of Nomad and Patriot are clearly such claims, and even if the GVC Residual Assets were property of the Debtors, the Monitor would be required to hold back sufficient proceeds to meet the claims of Nomad and Patriot if the US Court were to find that their claims were in fact interests in real property which could not be extinguished in the CCAA proceeding.
56. In addition, and as cited in full above, section 11 of the Sale Approval Order expressly provides that this Court "makes no finding as to whether the interests of Patriot or Nomad are interests in real property or in relation to the Adversary Claims", and that the Sale Approval Order "is without prejudice to the determination by the [Chapter 15 Court] of (i) whether the interests of Patriot or Nomad are interests in real property or (ii) the Adversary Claims..." The Chapter 15 Court recognized and enforced this provision in the Sale Recognition Order, and the preservation provision of that Order is entirely consistent with both the provisions of the Distribution Order and the Sale Approval Order cited here.
57. Although Golden Vertex has not accounted to Nomad in respect of the full amount of the royalty payments owing, the Monitor has acknowledged that Golden Vertex has failed to pay at least \$2 million of required royalty payments to Patriot and Nomad. On this basis, and from knowledge of past amounts owing, they estimate the royalty payments owing to date total \$1.7 million for Patriot and \$1.5 million for Nomad. This totals \$3.2 million, an amount exceeding the total amount of the GVC Residual Assets.

(b) The Chapter 15 Court had Jurisdiction over GVC Residual Assets

58. At the time that the Chapter 15 Court granted recognition and enforcement of the Sale Approval Order, the "GVC Residual Assets" consisted of cash, deposits and accounts receivable which were in the possession of Golden Vertex in Arizona.

59. As such, the GVC Residual Assets were subject to the jurisdiction of the Chapter 15 Court under the provisions of the US Bankruptcy Code. While under Chapter 15, the Court has the power to entrust the distribution of the U.S. debtors' assets to the "foreign representative", the Court is required to be "satisfied that the interests of creditors in the United States are sufficiently protected." In granting the Sale Recognition Order, the Chapter 15 Court exercised its jurisdiction to provide sufficient protection to Nomad and Patriot's interests.

U.S. Bankruptcy Code 11 U.S.C. § 1521(B)

(d) The Chapter 15 Court Exercised its Jurisdiction over the GVC Residual Assets taking into account the CCAA Court's Sale Approval, Nomad's Objections, and the Representations of the Monitor agreeing to the protection of the GVC Residual Assets

60. It is clear that the Chapter 15 Court rejected the objections of Nomad and Patriot and granted recognition and enforcement of the Sale Approval Order, at least in part, on the basis of:

- (i) The provision of the CCAA Court's Sale Approval Order that it was without prejudice to the claims of Nomad and Patriot; and
- (ii) The express representations of the Monitor in its December 20, 2024 written submissions and at the December 23, 2024 hearing that the GVC Residual Assets would be held and preserved by Elevation and would not be distributed without further order of the Chapter 15 Court.

Roberts Affidavit, Ex. "K", pp. 1-3

(e) The Chapter 15 Court Rejected the Attempt by the Monitor to Resile from its Representations; Retains Jurisdiction; No Appeal

61. Having heard the representations of the Monitor that the GVC Residual Assets would be held and preserved by Elevation and would not be distributed without further order of the Chapter 15 Court, and having directed the parties to arrive at a Sale Recognition Order which approved the sale but included that protection in respect of the GVC Residual Assets, the Chapter 15 Court rejected the attempt by the Monitor to "walk back" its representations, and not include that protection in the Sale Recognition Order.
62. The Chapter 15 Court specifically rejected the argument that the protection of the GVC Residual Assets was inconsistent with the prior orders of the CCAA Court, and pointed out that the sale proceeds were available to the Monitor for the payment of expenses, but that the GVC Residual Assets "will exist separate from this process."

Roberts Affidavit, Ex. "K", pp. 1-3

63. Finally, the Chapter 15 Court held that it retained jurisdiction to entertain a motion to vary the Sale Recognition Order. The Monitor has not brought such a motion, nor has it brought an appeal from the Sale Recognition Order.

(f) No reasonable basis to permit Elevation/GVC to have access to GVC Residual Assets; No merit to remaining arguments

64. Given the foregoing, there is no basis for the Canadian CCAA Court to give effect to the Monitor's attempt to interfere with the Sale Recognition Order of the Chapter 15 Court, either by granting the declaration sought or by implementing the Cross-Border Communications Protocol. The Sale Recognition Order was within the jurisdiction of the Chapter 15 Court, was made following express representations of the Monitor which the Court relied upon and refused to allow the Monitor to withdraw. The Chapter 15 Court has retained jurisdiction to vary the order, and no appeal has been sought.
65. This Application is an effort to mount a collateral attack on the Sale Recognition Order. Further, in light of the US Court's invitation to the parties to seek any variation of the Sale Recognition Order if required, the Application before this Court verges on a cross-border abuse of process.
66. In any event, neither the Debtors nor the Monitor require access to the GVC Residual Assets to make required payments in this proceeding, including contesting the claims of Nomad and Patriot. The Fifth Report of the Monitor dated January 27, 2025, estimates a cash flow spend of \$1.8 million from January to June 2025, which includes the cost of the litigation with Nomad and Patriot, against available cash of \$4.7 million (which does not include the GVC Residual Assets).

Fifth Report of the Monitor dated January 27, 2025, Appendix "E", pp. 164-165

67. With respect to the other issues raised by the Monitor, its assertion that the effect of the Sale Recognition Order will be to deny or restrict the Monitor's ability and the ability of the Debtors to contest the claims of Patriot and Nomad is clearly wrong. Under section 3 of the Distribution Order, the Monitor has access to the sale proceeds to fund any litigation which it chooses to pursue or defend. While Maverix has first priority over assets of the Debtor, it has zero priority over assets which the Debtor does not own. It will suffer no prejudice as a consequence of the Sale Recognition Order.
68. Finally, the Monitor argues that by including the words "right to proceeds from minerals extraction" in reference to the GVC Residual Assets in the Sale Recognition Order, the Chapter 15 Court expanded the definition of GVC Residual Assets such that it is inconsistent with the APS and the Sale Approval Order. This is also wrong. The APS definition of GVC Residual Assets includes "Accounts Receivable from Refinery", which is in turn defined in the APS as:

"...all accounts receivable or other amounts due, owing or accruing due to GVC or the Seller from any refinery, whether such amounts become due, owing or accruing, before or after Closing, in respect of any gold or silver processed or to be processed from any ore produced from the Moss Mine that is received by any such refinery prior to Closing..."

The "right to proceeds from minerals extraction" is clearly shorthand for this more extended definition. There is no change from the APS.

Part 6: MATERIALS TO BE RELIED ON

1. Affidavit #1 of Tim Swendseid, sworn July 29, 2024.
2. Affidavit #6 of Tim Swendseid, sworn December 3, 2024.
3. 1st Affidavit of Susan Danielsz made December 13, 2024.
4. Affidavit #1 of Hayley Roberts made February 10, 2025.
5. Fifth Report of the Monitor dated January 27, 2025.
6. Such further and other materials as counsel may advise and this Court may permit.

The Application Respondents' ADDRESS FOR SERVICE in this proceeding is:

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Vancouver, BC V6C 3E8

Attention: Vicki Tickle / Timothy Pinos

vtickle@cassels.com / tpinos@cassels.com

Dated: February 10, 2025



Signature of the Lawyer for the Application
Respondent
Vicki Tickle / Timothy Pinos